

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE D. ROBERTS et al.,

Appellants,

vs.

THE SOUTHERN PACIFIC COMPANY, A Corporation,
and THE KERN TRADING AND OIL
COMPANY, A Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States Circuit Court for the
Southern District of California, Northern Division.

FILED

DEC 26 1911

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellants:

FRANCIS J. HENEY, Esq., 1069 Phelan Building, San Francisco, California.

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For Appellees:

WM. SINGER, Jr., Esq., Flood Building, San Francisco, California.

GUY V. SHOUP, Esq., Flood Building, San Francisco, California.

D. V. COWDEN, Esq., Flood Building, San Francisco, California.

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation) et al.,

Defendants.

Citation.

United States of America,—ss.

To the Southern Pacific Company, a Corporation,
and the Kern Trading and Oil Company, a Cor-
poration, Greeting:

You are hereby cited and admonished to be and ap-
pear at a United States Circuit Court of Appeals for
the Ninth Circuit, to be held at the City of San Fran-
cisco, in the State of California, on the 14th day of
October, 1911, pursuant to an order allowing an ap-
peal entered in the Clerk's office of the Circuit Court
of the United States of America for the Ninth Judi-
cial Circuit, in and for the Southern District of Cali-
fornia, Northern Division, from a final decree signed,
filed and entered in that certain cause, being in
equity numbered 177 in the Circuit Court of the
United States of America, for the Southern District
of California, Northern Division, wherein George D.
Roberts et al. are complainants and appellants and
you are defendants and appellees, to show cause, if
any there be, why the decree rendered against said
appellants in the said order allowing appeal men-
tioned should not be corrected and speedy justice
should not be done in that behalf.

Witness the Honorable WILLIAM W. MOR-
ROW, United States Circuit Judge for the Ninth
Judicial Circuit, this 15th day of September, 1911,
and of the Independence of the United States the one
hundred and thirty-six.

WM. W. MORROW,
Circuit Judge.

Service of the within Citation and receipt of copy thereof, admitted this 15th day of September, 1911.

WM. SINGER, Jr.,

D. V. COWDEN and

GUY V. SHOUP,

Solicitors for Defendants, the Southern Pacific Company, and The Kern Trading and Oil Company.

[Endorsed]: No. 177—In Equity. In the Circuit Court of the United States of America in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs. Southern Pacific Company, a Corporation, et al., Defendants. Citation. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Subpoena Ad Respondendum.]

TO THE UNITED STATES MARSHAL FOR
THE NORTHERN DISTRICT OF CALI-
FORNIA.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,
Southern District of California, Northern Division.*

IN EQUITY.

The President of the United States of America,
Greeting: To The Southern Pacific Company, a
Corporation, The Southern Pacific Railroad
Company of California, a Corporation, and the
Southern Pacific Railroad Company of Arizona,
a Corporation, and the Southern Pacific Rail-

road Company of New Mexico, a Corporation, Consolidated, D. O. Mills, and Homer S. King, as Trustees, The Central Trust Company of New York, State of New York, a Corporation, The Equitable Trust Company of New York, State of New York, a Corporation, The Kern Trading and Oil Company, a Corporation, Julius Kruttschnitt, J. H. Wallace, J. L. Willcutt, W. A. Worthington, E. E. Calvin, Edwin T. Dumble, George L. King, C. H. Redington, W. R. Scott, J. E. Foulds, J. A. Jones, William F. Herrin, I. W. Hellman, James Wilson, F. K. Ainsworth, William Hood, A. K. Van Deventer, Joseph Hellen and William Mahl.

YOU ARE HEREBY COMMANDED, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Fresno on the 6th day of December, A. D. 1909, to answer a [2*] a Bill of Complaint as amended exhibited against you in said court by George D. Roberts, Z. L. Phelps, James Maynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David Ewing, D. M. Speed, W. M. Johnson, S. J. Gallagher, O. D. Loftus, W. W. Ayers, H. E. Ayers, Charles James, Chalk Roberts, Robert Rendall, Henry C. Kerr, George Eagle, J. L. D. Walp, James Ward, T. J. Turner, M. J. Corey, P. W. Cypher, G. W. Warner, Claud Barnes, W. H. Fraser, David Ishlman, Ash Service, Frank Prevost, Samuel Marshback, H. R. Crozier, J. M. Robertson, P. C. Taylor, Henry Greenleaf, J. W. Swartzlander, Henry Barada, E. N. Ayers, R. M. Cook, I. W. Alex-

ander, John W. Burdette, Walter Bacon and E. M. Scott, who are citizens of the State of California, and Fred E. Windsor, who is a citizen of the State of Pennsylvania, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 22d day of October, in the year of our Lord one thousand nine hundred and nine, and of our Independence the one hundred and thirty-fourth.

[Seal]

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED, to enter your appearance in the above suit, on or before the first Monday of December next, at the Clerk's Office of said Court pursuant to said Bill as amended; otherwise the said Bill as amended will be taken *pro confesso*.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

Clerk's Office: Los Angeles, California. [3]

Marshal's Return on Service of Writ.

Northern District of California.

I hereby certify and return that I served the an-

nexed Subpoena ad Respondendum on the therein named Southern Pacific Company, a corporation, the defendant herein named, by handing to and leaving with F. H. Reed, who is the person designated by the defendant under the statutes of the State of California, as the person upon whom all legal process shall be served in matters affecting the Southern Pacific Company, a corporation, in the State of California, a true and correct copy, personally at San Francisco, California, in the State and Northern District of California, in said District, on the 26th day of October, 1909.

Dated at San Francisco, California, this 26th day of October, 1909.

T. C. ELLIOTT,
U. S. Marshal.
By M. J. Fitzgerald,
Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Subpoena Ad Respondendum on the therein named The Kern Trading and Oil Company, a corporation, by handing to and leaving a true and correct copy thereof with C. H. Paddington, Secretary of the Kern Trading and Oil Company, a corporation, personally, at San Francisco, Cal., in said District, on the 26th day of October, A. D. 1909.

C. T. ELLIOTT,
U. S. Marshal.
By M. J. Fitzgerald,
Office Deputy. [4]

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Subpoena Ad Respondendum on the therein named The Southern Pacific Railroad Company of California, a corporation, by handing to and leaving a true and correct copy thereof with George L. King, Secretary of the Southern Pacific Railroad Company of California, a corporation, personally, at San Francisco, California, in said District, on the 26th day of October, A. D. 1909.

C. T. ELLIOTT,
U. S. Marshal.
By M. J. Fitzgerald,
Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Subpoena Ad Respondendum on the therein named Homer S. King, as trustee, by handing to and leaving a true and correct copy thereof with Homer S. King, as trustee, personally, at San Francisco, Cal., in said District, on the second day of November, A. D. 1909.

C. T. ELLIOTT,
U. S. Marshal.
By M. J. Fitzgerald,
Office Deputy.

[Endorsed]: Original. Marshal's Docket No. 5302. No. 177. U. S. Circuit Court, Ninth Circuit. Southern District of California, Northern Division. In Equity. George D. Roberts et al., Complainants, vs. The Southern Pacific Company, a Corporation, et al., Defendants. Subpoena. Filed Nov. 23, 1909. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. [5]

[Amended and Supplemental Bill.]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

BILL IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER,

HENRY BARADA and C. M. SCOTT, a Voluntary Unincorporated Association,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation, and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation, and THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated), and HOMER S. KING, as Trustee, THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN, and WILLIAM MAHL,

Defendants.

Affecting Southern Pacific Railroad Company's
Land Grant of July 27th, 1866, and June 28th,
1870. [6]

To the Judges of the Circuit Court of the United States of America, in and for the Southern District of California, Northern Division, Ninth Circuit, in Chancery Sitting:

George D. Roberts, of Coalinga, California, and a citizen of the State of California, and Z. L. Phelps, of Coalinga, California, and a citizen of the State of California, and James Maynard, Jr., of San Francisco, California, and a citizen of the State of California, and A. M. Anderson, of Coalinga, California, and a citizen of the State of California, and T. S. Minot, of San Francisco, California, and a citizen of the State of California, and Newton A. Johnson, of Coalinga, California, and a citizen of the State of California, and David Ewing, of Fresno, California, and a citizen of the State of California, and W. Herbert Gates, of Coalinga, California, and a citizen of the State of California, and W. M. Johnson, of Coalinga, California, and a citizen of the State of California, and S. J. Gallagher, of Coalinga, California, and a citizen of the State of California, and O. D. Loftus, of Coalinga, California, and a citizen of the State of California, and Thomas Barrett, Sr., of San Luis Obispo, California, and a citizen of the State of California, and H. E. Ayers, of Grangeville, California, and a citizen of the State of California, and James P. Sweeney, of San Francisco, California, and a citizen of the State of California, and Chalk Roberts, of Los Angeles, California, and a citizen of the State of

California, and Robert Rendall, of Los Angeles, California, and a citizen of the State of California, and Milo L. Rowell, of Fresno, California, and a citizen of the State of California, and H. T. Faust, of Los Angeles, California, and a citizen of the State of California, and James Ward, of Coalinga, California, and a citizen of the State of California, and J. L. D. Walp, of Coalinga, California, and a citizen of the State of California, and Fred E. Windsor, of Warren, Pennsylvania, and a citizen of the State of Pennsylvania, [7] and M. J. Corey, of Coalinga, California, and a citizen of the State of California, and J. W. Warner, of Coalinga, California, and a citizen of the State of California, and Claud Barnes, of Coalinga, California, and a citizen of the State of California, and W. H. Fraser, of Oilfields, California, and a citizen of the State of California, and Ash Service, of Coalinga, California, and a citizen of the State of California, and Samuel Marshback, of San Francisco, California, and a citizen of the State of California, W. W. Wickline, of Coalinga, California, and a citizen of the State of California, J. M. Robertson, of Coalinga, California, and a citizen of the State of California, P. C. Taylor, of Fresno, California, and a citizen of the State of California, Henry Greenleaf, of Coalinga, California, and a citizen of the State of California, and R. M. Cook, of Coalinga, California, and a citizen of the State of California, and I. W. Alexander, of Coalinga, California, and a citizen of the State of California, and J. W. Swartzlander, of Coalinga, California, and a citizen of the State of California, and Henry Barada, of Coalinga,

California, and a citizen of the State of California, and E. M. Scott, of Coalinga, California, and a citizen of the State of California, a voluntary unincorporated association, bring this their first amended bill in the nature of a supplemental bill by leave of Court first had and obtained against:

The Southern Pacific Company, a corporation of Kentucky, and a citizen of the State of Kentucky,

The Southern Pacific Railroad Company, a corporation of California, and a citizen of the State of California, and

The Southern Pacific Railroad Company, a corporation of Arizona, and a citizen of the Territory of Arizona, and

The Southern Pacific Railroad Company, a corporation of the Territory of New Mexico Consolidated. [8]

Homer S. King, of San Francisco, California, and a citizen of the State of California, and

The Central Trust Company of New York City, New York, and a citizen of the State of New York, and,

The Equitable Trust Company of New York City, New York, and a citizen of the State of New York, and,

The Kern Trading and Oil Company of San Francisco, California, and a citizen and denizen of the State of California,

And thereupon your orators complain and say unto your Honors:

I.

That the defendant, the Southern Pacific Com-

pany, is a *quasi* public corporation, duly organized and existing under and by virtue of the laws of the State of Kentucky, with its head office and principal place of business at 120 Broadway, New York City, State of New York.

That the Southern Pacific Railroad Company, of California is a *quasi* public corporation, and was duly organized and now exists under and by virtue of the laws of the State of California for the purpose of constructing, operating, and maintaining a certain standard gauge steam railroad within the State of California between certain points within the borders of the said State, and it has its head office and principal place of business in the Flood Building, in the City and County of San Francisco, State of California.

That the Southern Pacific Railroad Company, of Arizona, is a *quasi* public corporation, duly organized and existing under and by virtue of the laws of Arizona, and was consolidated with the defendant, the Southern Pacific Railroad Company of California on or about the 10th day of March, 1902, together with the Southern Pacific Railroad of New Mexico. [9]

That the Southern Pacific Railroad Company of New Mexico is a *quasi* public corporation, duly organized, and existing under and by virtue of the laws of New Mexico, and was consolidated with the defendant, the Southern Pacific Railroad Company, of California, on or about the 10th day of March, 1902, together with the Southern Pacific Railroad Company of Arizona as aforesaid.

That said three consolidated corporations are

wholly owned, dominated, and absolutely controlled by defendant, the Southern Pacific Company, of Kentucky, for that, and this, that said defendant, the Southern Pacific Company of Kentucky, is a "holding" corporation, and owns all of the capital stock of each of said defendants, to wit: The Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company of New Mexico, and the Southern Pacific Railroad Company of Arizona. And your orators are informed and believe has or claims to have some interest by lease or otherwise in all the lands affected by this suit.

That D. O. Mills has died since the commencement of this suit, and prior to filing this supplemental bill, and defendant, Homer S. King, is now sole trustee, in and under a certain Trust Deed, made and executed by defendant, the Southern Pacific Railroad Company of California, on the 1st day of April, 1875, purporting to secure the payment of \$46,000,000 in bonds, to be issued by the said Southern Pacific Railroad Company of California and claimed by defendants, the Southern Pacific Railroad Company of California, and Homer S. King, to be a lien upon a certain grant of land made by the United States of America to defendant, the Southern Pacific Railroad Company on the 27th day of July, 1877, as is more particularly hereinafter set forth and stated, including the lands involved in this suit.

That defendant the Central Trust Company of New York, State of New York, a private corporation, is sole trustee in and [10] under a certain deed of trust made and executed by the defendant, the South-

ern Pacific Railroad Company of California, on the 15th day of September, 1894, purporting to secure the payment of \$58,000,000 in bonds issued and to be issued by the said Southern Pacific Railroad Company, defendant herein, also in a certain supplemental Trust Deed, between the same parties, limiting said issue of bonds to \$30,000,000, and claimed by defendants, the Southern Pacific Railroad Company of California, and the Central Trust Company of New York, to be a lien upon a certain grant of lands, made by the United States of America to defendant, the Southern Pacific Railroad Company on the 27th day of July, 1866, as is more particularly hereinafter set forth and stated, including the lands involved in this suit.

That defendant, the Equitable Trust Company of New York, a private corporation, is sole trustee in and under a certain deed of trust, made and executed by the defendant, the Southern Pacific Railroad Company of California on the 3d day of January, 1905, purporting to secure the payment of \$88,502,000 in refunding bonds issued and to be issued by the said Southern Pacific Railroad Company defendant herein, and claimed by defendants the Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico, and defendant, the Equitable Trust Company of New York, to be a lien upon *lien upon* the entire assets, properties, franchises and a certain grant of lands made by the United States of America to defendant, The Southern Pacific Railroad Company, on the 27th

day of July, 1866, and is more particularly herein-after set forth and stated, including the lands involved in this suit, and that for and on account of this Trust Deed, your orators say unto your Honors the defendants, The Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico are mentioned herein as defendants coupled to and consolidated with defendant, The Southern Pacific Railroad Company of California as above stated. [11]

That the defendant, The Kern Trading and Oil Company is a private corporation, organized, and existing under and by virtue of the laws of the State of California, with its head office and principal place of business, in the offices of defendant, The Southern Pacific Railroad Company, consolidated as aforesaid, in the Flood Building, in the City and County of San Francisco, State of California.

That your orators are informed and believe, and therefore say and show unto your Honors that Edwin T. Dumble, George L. King, C. H. Redington, J. E. Foul, W. A. Worthington, and W. R. Scott, are officers and directors of the defendant, The Kern Trading and Oil Company, and that Julius Kruttschnitt, J. A. Jones, William F. Herrin, I. W. Helman, Homer S. King, James K. Wilson, J. L. Willcutt, F. K. Ainsworth, E. E. Calvin, William Hood, A. K. Van Deventer, C. H. Redington, Joseph Hellen and William Mahl are officers and directors of defendants, The Southern Pacific Railroad Company of California, consolidated as aforesaid.

II.

Your orators further say and show unto your

Honors that there was heretofore passed by the Congress of the United States of America, and duly approved by the President of the United States of America, on the 27th day of July, 1866, a certain Act, granting certain lands to the defendant, The Southern Pacific Railroad Company of California, a corporation, subject however to certain mineral reservations, exceptions, exclusions, restrictions and limitations, in said Act contained, and that said Act, granting said lands as aforesaid, thereupon became, and now is, a public law, and that a construction, and an interpretation of sections three, and eighteen of said Acts of Congress is sought in this suit, coupled to all acts and joint resolutions amendatory thereof and supplemental thereto, and all acts of the Department [12] of the Interior of the United States of America, herein-after set forth and also the patent, hereinafter set forth, made, executed, and delivered by the United States of America to defendant, The Southern Pacific Railroad Company of California, on the 10th day of July, 1894, covering and embracing all lands involved in this suit.

And your orators further say, and show unto your Honors, that section three of said Act of July 27th, 1866, is in words and figures as follows, to wit:

"Section 3, AND BE IT FURTHER ENACTED,
that there be and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said Railroad and Telegraphic line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, and munitions of war, and

public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, whenever, on the lines thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said railroad is designated by a plat thereof, filed in the office of the Commissioners of the General Land Office; and whenever, prior to said time, any of said sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted or otherwise disposed of, other lands shall be selected by said Company in lieu thereof, under the directions of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not [13] more than ten miles beyond the limits of the said alternate sections, and not including the reserved numbers: Provided further, that the Railroad Company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company' or may consolidate, confederate, and associate with said Company upon the terms named in the first and seventeenth sections of said Act: Provided further, that all mineral lands be, and the same are hereby, excluded from the operations of this Act, in lieu thereof a like quantity of unoccupied and unap-

propriated agricultural lands in odd numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: And Provided further, that the word ‘mineral’ when it occurs in this Act, shall not be held to include iron and coal:

“And provided further, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad.

“And your orators further say that Section eighteen of said Act is in words and figures as follows, to wit:

“Section 18. And be it further enacted that the Southern Pacific Railroad, a Company incorporated under the laws of the State of California, is hereby authorized to connect with said Atlantic and Pacific Railroad, formed under this Act, at such points, near the boundary line of the State of California, as they shall deem most suitable for the railroad lines to San Francisco, and shall have uniform gauge and rate of freight and fare with said road; and in consideration thereof to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for”: [14]

That thereafter and by virtue of a joint resolution of Congress approved June 28th, 1870, certain mandatory conditions were imposed and prescribed,

by and under which, said Railroad and Telegraph line should be constructed, and under and by what terms and conditions patents should be issued by the Secretary of the Interior, to defendant, The Southern Pacific Railroad Company of California, for said granted lands, and said joint resolution was and is in words and figures as follows, to wit:

“BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said Company in the Department of Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the Company to the Secretary of the Interior, he shall direct an examination of each such section by Commissioners to be appointed by the President, as provided in the Act, making a grant of said Company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraphic line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said Company for the sections of land coterminous to each constructed Section reported on as aforesaid, to the extent and amount granted to said Company

by the said Act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said Act.

“Approved June 28th, 1870.” [15]

II $\frac{1}{2}$.

Your orators further aver and show unto your Honors that said defendants, The Southern Pacific Railroad Company of California, preparatory to, and for the purpose of, and with the intent to obtain a patent to the lands involved in this suit, and other lands, did, on or about the 9th day of May 1892, make the following appointment and certificate, pursuant to, and under and by virtue of the Acts of Congress of July 27th, 1866, July 25th, 1868, and Joint Resolution of June 28th, 1870, which said appointment and certificate was, and is, in words and figures, as follows, to wit:

“Office of the Southern Pacific Railroad Company,
San Francisco, California.

“I, Joseph L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the (10th) tenth day of May A. D. 1875, and that since that time he has been continuously, and now is, the Land Agent of the Southern Pacific Railroad Company.

“IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the South-

ern Pacific Railroad Company on the 9th day of May A. D. 1892.

[Seal] "JOSEPH L. WILLCUTT."

That thereafter, and pursuant to said Acts of Congress and in accordance therewith, and with actual knowledge, absolute acceptance thereof, complete acquiescence therein, and in due recognition of the same, said Jerome Madden did, for and on behalf of defendant, The Southern Pacific Railroad Company, make, [16] under and pursuant to the rules and regulations prescribed by the Commissioner of the General Land Office of the United States of America, and he did file a certain list of Selections of lands known, and designated herein and therein as list No. 24 of lands claimed by the Southern Pacific Railroad Company under said grant, which said list of selections include all the lands involved in this suit, and that said selections did, and does bear the following heading, statement, or claim, concerning and referring to said lands, and is duly signed by said Jerome Madden, on behalf of said defendant, and is in words and figures as follows, to wit:

"LIST OF LANDS

in the

VISLAIA LAND DISTRICT, CALIFORNIA,

Selected by the

SOUTHERN PACIFIC RAILROAD COMPANY
OF CALIFORNIA.

"The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, and under and by virtue of the Act of

Congress, approved July 27th, 1866, entitled, ‘An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast,’ and the further Act, approved July 25th, 1868, entitled ‘An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California,’ and the Joint Resolutions of Congress June 28th, 1870, ‘Concerning the Southern Pacific Railroad of California,’ and under and in pursuance of the rules and regulations prescribed by the Commissioners of the General Land Office, hereby makes and files the following list of Selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the [17] said Acts of Congress, and the location of the line of route of the Railroad and Telegraph of said Company; being in part for ninth (9th) and seventeenth (17th) sections, (forty 559/1000 miles) of the same, commencing at a point in NE. $\frac{1}{4}$, Sec. 2, T. 19 S., R. 20 E., M. D. B. & M. and ending at Alcalde which said sections of road and *tepegraphic* have been duly accepted by the President of the United States of America, as provided in the aforesaid Acts and Joint Resolutions of Congress, the Selection being particularly described as follows: * * *

“JEROME MADDEN,
“Land Agent of the Southern Pacific Railroad Com-
pany.”

That your orators have not inserted said list in detail in this bill of complaint, at any time, for the

reason that it would unnecessarily encumber the record, and subserve no pertinent purposes, and therefore is wholly omitted, but the lands immediately affected by this suit are hereinafter fully described and designated as being, and they are a part of the lands included in said List of Selections. That thereafter pursuant to said intent to obtain a patent to the lands involved in this suit, and to carry it out, and consummate the same, defendant, the Southern Pacific Railroad Company, did cause to be made by its duly authorized agent, and he did make the following false, and fraudulent affidavit, on its behalf, concerning the physical, and mineral characters of the lands involved in this suit, and did file the same in the Department of the Interior of the United States of America, and said false affidavit was and is in words and figures as follows, to wit:

“STATE OF CALIFORNIA,
City and County of San Francisco.

“I, Jerome Madden, being duly sworn, depose and say: [18] that I am the Land Agent of the Southern Pacific Railroad Company, that the foregoing list of lands which I hereby Select is a correct list of a portion of the public lands claimed by the said Southern Pacific Rairoad Company as inuring to it, to aid in the construction of the Railroad of said Company from a point in NE. $\frac{1}{4}$, Sec. 2, T. 19 S., R. 20 E., M. D. B. & M. 2 Alcalde for which a grant of lands was made by the Acts of Congress approved July 27th, 1866, July 25th, 1868, and June 28th, 1870, as aforesiad, that the said lands are vacant, unappropriated, and *are interdicted* mineral nor reserved

lands and are of the character contemplated by the grant, being within the limits of Twenty (20) miles on each side of the line route for a continuous distance of forty $559/1000$ (40 $559/100$) miles, being for the ninth (9th) and seventeenth (17th) sections of said road starting from a point in NE. $1/4$, Sec. 2, T. 19 S., R. 20 E., M. D. B. & M., and ending at a point in NE. $1/4$, Sec. 23, T. 21 S., R. 14 E., M. D. B. & M.

“JEROME MADDEN. [Seal]

“Sworn to and subscribed before me this Ninth (9th) day of May, 1892. Witness my hand and Notarial seal.

[Seal]

“E. B. KYON,

Notary Public in and for the City and County of San Francisco, in the State of California.”

That thereafter and on or about May 14th, 1892, pursuant to said intent to obtain a patent to the lands involved in this suit and in furtherance thereof, defendant, the Southern Pacific Railroad Company, did by its duly authorized agents and representatives, cause the following certificate to be made by the duly appointed officers of the United States Land Office at Visalia, [19] California and which said certificate was and is in figures and words as follows, to wit:

“United States Land Office.

“Visalia, Cal., May 14th, 1892.

“We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, by Acts of Congress, approved July 27th, 1866, July 25th, 1868, and June 28th, 1870, above mentioned and selected by Jerome Madden, the duly authorized

agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of Twenty (20) miles on each side, and that the same are not or is any part thereof, returned and denominated as mineral land or lands, not claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

“We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress, approved July 1st, 1864, and contemplated by the circular of instructions dated January 24th, 1867, addressed by the Commissioner of the General Land Office of Registers and Receivers of the United States Land Offices, and that the said Company have paid to the undersigned, the Receiver, the full sum of Forty-two hundred and fifty-eight (\$4,258.00) Dollars in full payment and discharge of said fees.

“M. J. WRIGHT, Register.

“R. L. FREEMAN, Receiver.

“That thereafter, and on or about May 16th, 1894, The [20] Department of the Interior of the United States of America took action on the foregoing *ex parte* statements, affidavits, and certificates, and a new list of said lands was made by said Department of the Interior, which said list was, and is known and designated in said Department as ‘LIST

NUMBER 19 SOUTHERN PACIFIC RAILROAD LANDS, MAINE LINE, GRANTED LIMITS, LOS ANGELES, INDEPENDENCE, SAN FRANCISCO AND VISALIA DISTRICTS, CALIFORNIA.' And that said list is a duplicate of list numbered 34, filed by defendant, The Southern Pacific Railroad Company, and hereinbefore referred to in this bill of complaint, and said list so prepared and numbered 19, bears and contains the following findings of facts, to wit:

“ ‘Department of the Interior
“ ‘General Land Office.,

“ ‘May 16th, 1894.

“ ‘Whereas, by the Act of Congress approved July 27th, 1866, and Joint Resolution of June 23, 1870, to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for Postal, Military and other purposes; authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a Railroad and Telegraph line, under certain conditions and stipulations expressed in said Act, from the city of San Francisco, to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said Company every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of

said road [21] not sold, reserved, or otherwise disposed of by the United States and to which pre-emption of homestead claim may not have attached at the time the line of said road is definitely fixed.

“*And, whereas*, official statements from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said Railroad and Telegraph, from San Jose to Tres Pinos, and from Alcalde to Majare, together comprising two hundred and fifty-two miles, and four hundred and seventy-nine thousandths of a mile, has been constructed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the President,—

“*And Whereas*, the following tracts have been duly listed under the Act aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of sections, approved by the local officers and on file in this office,—

“*And whereas*, the said tracts of land lie coterminous to the constructed line of said road and are particularly described as follows, to wit: * * *”

That your orators again omit any detailed list of said lands, for the reasons hereinbefore set forth and stated, and submit to your Honors that it would be unnecessary to insert such list and that such matters would be impertinent.

Your orators further show and aver, that thereafter for the purpose of carrying said land to patent,

and on or before the 16th day of May, 1894, the following certificates were made by the General Land Office of the United States of America, through its examiners and approved by its chief of Division in the following words and figures, to wit: [22]

“General Land Office.

“Railroad Division, May 16th, 1894.

“We hereby certify that the foregoing list has been carefully examined in connection with the records and plats of this office and the tracts therein described are found to be vacant and unappropriated and within the primary limits of the grant of July 27, 1866, to the Southern Pacific Railroad Company (Main Line), and subject to approval and patent to said railroad Company under said Act.

“M. V. HARVEY,

“M. NIVEN,

“Examiners.

“Approved.

“Chief of Division.”

“General Land Office.

“Mineral Division, June 23, 1894.

“This certifies that the tracts described in the foregoing Clear List No. 19 have been examined in connection with the records of this office and *are not* to be in conflict with mining claims and were not returned as mineral by the United States Surveyor General. There are no mining claims of record for lands in the townships containing selections or within

six miles of such selections.

“GEO. F. POLLOCK,

“C. A. HOLLINGSWORTH,

“Examiners.

“Approved:

“J. WRIGHT,

“Chief of Division.”

“General Land Office,

“Division of Swamp Lands,

“Washington, D. C., June 23, 1894.

“This certifies that the foregoing list No. 19, Southern Pacific Railroad, aggregating 440,900.85 acres, has been [23] carefully examined in connection with the swamp land records of this office, and that the same has been found free from conflict.

“C. T. PIERCE, Examiner.

“Approved:

“EDMOND MALLET,

“Chief of Division.”

Your orators further aver and show unto your Honors that, based upon and acting upon the foregoing *ex parte* statements, false affidavits, certificates and said findings of fact and relying upon the same, the following final order of decree; was made and entered in the Department of the Interior of the United States of America, by its duly authorized officials, to wit: The Commissioner of the General Land Office and the Secretary of the Interior, and said order, decree or judgment was and is in words and figures as follows, to wit:

“Now, therefore, as it has been found on a careful examination of the foregoing list in connection with

the authenticated map on file in the *Central Land Office*, of the Survey of the *Southern Pacific Railroad route*, that the lands fall within the twenty mile lateral limits of said route, and that the said lands so far as the records of the *Central Land Office* show are free from conflict, it is hereby recommended that the tracts described covering four hundred and forty thousand — hundred acres and twenty-five hundredths of an acre be approved and carried into patent as the lands falling within the grant by the Act aforesaid to the *Southern Pacific Railroad Company of California*, excluding, however, from the approval and from the transfer in the patent that may issue, '*All Mineral Lands*,' should any such be found in the tracts aforesaid, but this exclusion according to the terms of the statute 'shall not be construed to include iron and coal.'

"G. W. LAMOREUX,
"Commissioner. [24]

"To the Honorable, Secretary of the Interior.

"Department of the Interior,
"Washington, D. C."

"June 27, 1894."

"Approved: Covering four hundred and forty thousand, nine hundred acres and eighty-five hundredths of an acre."

"HOKE SMITH,
"Secretary."

Your orators further say and show unto your Honors that the oath or affidavit made by Jerome Madden, for and on behalf of defendant, the Southern Pacific Railroad Company, on the 9th day of

May, 1892, concerning the mineral character of the lands involved in this suit, and stating that they were "Not interdicted mineral nor reserved lands," and that they were of "the character contemplated by the grant" is wholly, absolutely, and unqualifiedly false, fraudulent and untrue and was untrue at the time it was made by the said Jerome Madden, and he well knew it to be fraudulent, and untrue, and well knew that the lands involved in this suit were interdicted mineral lands, and that they were reserved by Congress of the United States and dedicated to the special purposes, to wit, to the public for mining purposes.

That the defendant, the Southern Pacific Railroad Company did, by said false and fraudulent affidavit deceive and impose upon and mislead the Department of the Interior in the premises, and the Department of the Interior did act upon said false affidavit, and said defendant, the Southern Pacific Railroad Company did fraudulently cause the lands involved in this suit to be listed along with other lands as nonmineral in character, and did fraudulently and deceitfully cause patent to be issued therefor [25] to defendant, Southern Pacific Railroad Company, but your orators insist and submit, that the Commissioner of the General Land Office and the Secretary of the Interior, did, by their final decree, save and preserve all mineral lands contained therein, and the equitable rights of your orators therein, and that defendant, the Southern Pacific Railroad Company, only hold the naked legal title thereto under said patent, which obstacle, patent, or

fraudulent claim of title your orators ask to have removed, restricted or controlled as is more particularly hereinafter set forth and stated.

III.

Your orators further say and show unto your Honors that the patent to the lands involved in this suit, which are embraced within the limits of said Land Grant aforesaid, follows said decree, Joint Resolution and Act of July 27, 1866, and the pertinent and essential part thereof is in words and figures as follows, to wit:

“TO ALL TO WHOM THESE PRESENTS
SHALL COME GREETING:

“WHEREAS, by the Act of Congress approved July 27, 1866, and the Joint Resolutions of June 28, 1870, ‘to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast,’ and to secure to the Government the use of the same for Postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a Corporation existing under the laws of the State to construct a Railroad and Telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting, to the said Company every alternate section or public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad, on the line thereof, [26] and within the limits of twenty

miles on each side of the said road ‘not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption, or homestead claim may have not attached at the time the line of the said road is definitely fixed.’

“*And Whereas*, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the said Act of July 27th, 1866, have reported to him that the line of the said railroad and telegraph from San Jose to Tres Pinos and from Alcalde to Majave, together comprising two hundred and fifty-two and four hundred and twenty-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27th, 1866, and accepted by the President.

“*And Whereas*, the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original list or selections approved by the local officers and on file in this office.

“*And Whereas*, the said tract of land lies co-terminous to the constructed line of the said road are particularly described as follows, to wit: South of the base line and east of Mount Diable Meridian, State of California.

“All of sections 5, 7, 11, 17, 19, 29, 31.

“Township 20, Range 15.

“All of sections 15, 25.

“Township 23, Range 17.

“All of section 31.

“Township 23, Range 18.

“Township 21, Range 15.

“All of section 5 and

“All of section 7 (with other lands contained in
[27] said patent not affected by this suit).

“The said tracts described in the foregoing make the aggregate area of 440,900.85 acrea.”

“NOW KNOW YE, That the United States of America in consideration of the premises and pursuant to the Acts of Congress, have given and granted by these presents to give and to grant unto the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing.

“Yet excluding and excepting ‘All Mineral Lands,’ should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, and shall not be construed to include ‘Coal and iron lands.’

“To have and to hold the same with the appurtenances unto the said Southern Pacific Railroad Company, and to its successors and assigns forever:

“In testimony whereof, I, Grover Cleveland, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

“Given unto my hand at the City of Washington, this tenth day of July, in the year of our Lord, one thousand eight hundred and ninety-four, and in the Independence of the United States, the one hundred and nineteenth.

“By the President, GROVER CLEVELAND,
“H. M. KEAN, Secretary.”

IV.

Your orators further say and show unto your Honors that defendant, the Southern Pacific Railroad Company, did, by virtue of its aforesaid acts, set forth in paragraph 11½ of this bill, assent to all the terms and conditions of said Act [28] of Congress, approved July 27th, 1866, and Joint Resolutions of June 28th, 1870, and did wholly submit to the terms and conditions of said Act, and did agree that said Southern Pacific Railroad and its assigns, its successors, and all persons in privity with it, would recognize, respect, abide by, be bound by, be absolutely held by the reservations, exceptions and exclusion of all mineral lands contained in said grant, *should any such be found*, according to the tenor, conditions, restrictions, terms and limitations, and reservations thereof, and *contain* in said grant and said Joint Resolution, and that said defendant, the Southern Pacific Railroad Company of California, did thereupon, and then and there recognizing said Acts of Congress, apply to the Secretary of the Interior of the United States of America for a certain patent, which is hereinbefore set forth, and which said patent covers and embraces all lands involved in this suit, and that said application, so made, was based upon said Act of Congress and Joint Resolution and the whole thereof; and the order or decree of the Department of the Interior, and that pursuant to said application and under said order or decree, said patent was issued to defendant, the Southern Pacific Railroad Company of California, on the 10th day of July, 1894, and said defendant

received, and accepted said patent, and the whole thereof, in all its parts, from the United States of America, and the United States of America have never directly or indirectly, by itself, or others, waived or repudiated the same, nor any of the terms, exceptions, reservations, or exclusions therein contained, and said patent so received and accepted by said defendant contained, and does contain the following clinging, continuing, exclusion and nonde-feasible reservation, exception, and restriction, based upon said Act of Congress, and said Joint Resolution of June 30th, 1870, and the final decree of the Department [29] of the Interior, and said reserva-tion was, and is in words as follows, to wit: "YET EXCLUDING AND EXCEPTING ALL MIN-ERAL LANDS SHOULD ANY SUCH BE FOUND IN THE TRACTS AFORESAID, BUT THIS EXCLUSION AND EXCEPTION AC-CORDING TO THE TERMS OF THE STAT-UATE, SHALL NOT BE CONSTRUED TO INCLUDE COAL AND IRON LANDS." And your orators further say and show unto your Honors, do hereby insist and submit, that the defendant, the Southern Pacific Railroad Company of California, and all persons in privity with it, and each and all defendants herein, are bound by the aforesaid acts of defendant, the Southern Pacific Railroad Company, and are estopped in equity and good conscience to claim any interest, estate or title, of any nature whatsoever, in or to any of said lands involved in this suit, by virtue of said acts herein-before or hereinafter set forth and stated.

And your orators further insist and submit, in anticipation, that, for and on account of the facts hereinbefore set forth, and all matters and things, in this bill stated, and the exclusion, exception, and reservation, in said patent, and decree of the Commissioners of the General Land Office, and the approval thereof by the Secretary of the Interior of the United States of America, based upon said Act of Congress, and joint Resolution to each of which your orators beg leave again directly and specifically refer, the statutes of limitations do not run against your orators, and that it would be inequitable, unconscionable and unjust to apply the statute of limitations, or the analogous doctrine of laches to said continuing, nondefeasible reservation, exception and exclusion, in said grant, Joint Resolution, order or decree of the Commissioner and patent contained, against the well defined legal and equitable rights and interest of your orators in the mineral lands involved in this suit, and duly claimed by your orators under the mining laws of the United [30] States of America. And your orators further say and show unto your Honors, that for your Honors to allow the statute of limitations or the analogous doctrine of laches to prevail against your orators in this suit, and against the clinging and continuing exclusion, exception and reservation, in said grant, Joint Resolution, order or decree, and patent contained, would be equivalent and tantamount to the arbitrary nullification of said continuing and nondefeasible reservation, exclusion and exception, the decree of the Secretary of the Interior, and absolute defeat of the

express will and intent of Congress, resulting in creating a vicious monopoly in and under the domination and control of the defendant, the Southern Pacific Railroad Company of Kentucky, contrary to law, equity, and good conscience and, public policy, and against the vital interests of your orators and all citizens of the State of California and the United States of America.

VI.

And your orators further say and show unto your Honors, that the said Act of Congress granting said lands to defendant, The Southern Pacific Railroad Company of California, and all Acts and Joint Resolutions supplementary thereto, or amendatory thereof, and the Acts of the Department of the Interior of the United States of America, in issuing said patent to the lands involved in this suit, and the recording of said patent, were and are public acts, and should be taken as, and termed public acts in all courts and places whatsoever, as by said acts, intended, and which your orators beg leave to refer.

VII.

Your orators further say and show unto your Honors, that defendant, Homer S. King, as trustee, of the first deed of trust, hereinbefore referred to, placed upon said granted lands, as aforesaid, by defendant, The Southern Pacific Railroad [31] Company of California, and made, executed, and delivered, by said defendant on or before the first day of April, 1875, by virtue thereof, claims to have some estate, title or interest in and to all the lands involved in this suit, adverse to your orators, but your orators

insist and submit, that on account of the matters and things in this bill stated, that each, all or any claim made by said defendant under said trust deed, or otherwise are invalid, illegal; and wholly and utterly void, and of no effect against your orators, and that said defendants have no rights, interest or estate in any part thereof; for that said deed was made and accepted with a full knowledge of said Act of Congress and Joint Resolution.

And your orators further say and show unto your Honors, that defendant, the Central Trust Company of New York, a corporation, as trustee of the second trust deed, hereinbefore referred to, and placed upon said granted lands, as aforesaid, by defendant, the Southern Pacific Railroad Company, and made, executed, and delivered, by said defendant, on or about the first day of September, 1893, by virtue thereof, *claim* to have some estate, right, title, or interest in and to all the land involved in this suit, adverse to your orators, but your orators insist and submit that on account of the matters and things in this bill stated, that each, all, or any claims made by said defendant under said trust deed, or otherwise are invalid, illegal and wholly and utterly void and of no effect, and that said defendant has no rights, interests or estate in or to any of the lands involved in this suit, as against your orators, or any part thereof; for that said deed was made and accepted with a full knowledge of said Act of Congress and Joint Resolution.

And your orators further say and show unto your Honors, that defendant, the Equitable Trust Com-

pany of New York, a corporation, as trustee of the third trust deed hereinbefore referred to, as aforesaid, and placed upon said granted lands by defendant, the Southern Pacific Railroad Company, and made, executed and delivered by said defendant on or about the 3d day of January, 1905, by virtue thereof claim to have some interest, estate, right or title, in and to all the lands involved in this suit, adverse to your orators, but your orators insist and submit that on account of the matters and *th* things in this bill stated, that each, all or any claims made by said defendant under said trust deed, or otherwise are invalid, illegal and wholly void and of no effect, and that said defendant has no rights, interest or estate in or to any of the lands involved in this suit, as against your orators, or any part thereof; for that said deed was made and accepted with full knowledge of said Act of Congress and Joint Resolution.

And your orators further say and show unto your Honors, that defendant, the Kern Trading and Oil Company is a *suppositious* corporation, and exists in form only, and is composed of and officered by and absolutely dominated, owned and managed and [32] controlled by certain dummies, employees, officers, and directors of its confederate, The Southern Pacific Railroad Company, a corporation, defendant herein, and was organized with the fraudulent intent, and for the unlawful purpose of doing certain things indirectly, which defendant, its confederate, the Southern Pacific Railroad Company, a corporation, could not do directly: that is to say, to sink, develope, operate, and monopolize oil wells, and, by such

actions to monopolize and hold unto itself all mineral oil lands within the borders or outlines of its said grant, in the State of California, contrary to said Act of Congress and said Joint Resolution, and that pursuant to that fraudulent intent, and to carry out said surreptitious, and deceitful scheme, confederating together with said defendant, the Southern Pacific Railroad Company, a corporation, has, at divers times, since the incorporation of defendant, its confederate, and conduit, the Kern Trading and Oil Company, which was incorporated on or about the 21st day of May, 1903, secretly made and entered into, certain leases of certain lands, to this defendant, the Kern Trading and Oil Company, and the defendant, the Southern Pacific Railroad Company, conspiring and confederating together with the Kern Trading and Oil Company, and with defendants, Edwin T. Dumble, George L. King, J. B. Foulds, W. A. Worthington, W. R. Scott, and C. H. Redington, directors, dummies and officers of said defendant and further confederating with each other, and the defendant, the Southern Pacific Company of Kentucky, and with defendants, I. W. Hellman, H. A. Jones, William F. Herrin, Homer S. King, James K. Wilson, J. L. Willcutt, F. K. Ainsworth, E. E. Calvin, William Hood, A. K. Vandeventer, Joseph Hellman and William Hood, directors, and officers and stockholders, of defendant, the Southern Pacific Railroad Company have for the purpose of circumventing the laws, obliquely evading [33] its effects, and creating and maintaining a monopoly as aforesaid, made, executed and delivered many secret

leases from itself to itself through the medium of defendant, the Kern Trading and Oil Company, using it as a fraudulent vehicle, conduit or go-between to carry out said fraudulent conspiracy. That said leases are not recorded in any public places of the State of California, but are clandestinely held and secreted by the defendant, The Southern Pacific Railroad Company, and your orators do not know, and are unable to find out, or ascertain just what covenants and conditions said leases contain, when they were executed, or when they expire, or what lands are claimed to be affected by said fraudulent leases, so secretly and surreptitiously executed and delivered, to said suppositious corporation, defendant, the Kern Trading and Oil Company, but your orators say, based upon the foregoing facts and information and belief that defendant, the Kern Trading and Oil Company claim to have some estate, right, title or interest in and to all of the property involved and claimed in this suit by your orators by virtue of said clandestine leases, adverse to your orators, but by virtue of and on account of the matters and things in this bill stated, all claims or any claims made by said suppositious and fraudulent corporation, the Kern Trading and Oil Company, defendant, affecting any of the lands involved herein or claimed by your orators in this suit, under said fraudulent leases or otherwise are invalid, illegal and wholly void and of no effect and said defendant has neither rights, interests, or estate in or to any of the lands involved in this suit, or any part thereof as against your orators.

And your orators further say, and show unto your Honors, that all of the lands hereinafter described and claimed by your orators are vacant, unimproved, uninclosed, and wild lands, and each quarter section thereof is "proved" lands and contains [34] mineral oil and other kindred minerals in large and paying quantities, and that said lands are more valuable for mining purposes than any other.

And your orators further aver and show unto your Honors that, prior to the making of the locations hereinafter mentioned, the said locators actually discovered valuable deposits of petroleum and mineral oils, upon each and every one hundred and sixty acres of land involved in this suit and in large and paying quantities on each and every claim herein, and that said petroleum and mineral oil, did then and does now actually exist therein and is in large and paying quantities in each and every quarter section and claim. That the lands immediately adjoining, abutting and contiguous to the tracts involved in this suit, and upon all sides of each of said claims, was and is "proved" mineral and oil land, in which petroleum in large and paying quantities has been and now is found, and which contains shale, seepage of oil, and veins of sand-rock, which said veins, oil, and shale did, and now does extend upon, through, underneath and completely across each and all of the said mining claims set forth and described in this suit. That all of the claims hereinbefore described are wholly within the areas of lands previously withdrawn from any but mineral land entry by the Department of the Interior of the United States of America, and

each and all of said lands, and the surrounding lands, contiguous thereto have been, and are now classified by the United States of America through the Department of the Interior as being, and they are exclusively and notoriously mineral oil lands, and have been publicly known to be such since 1892. That on the 10th day of July, 1894, upon which date said patent was issued to, and accepted by the said defendant, the Southern Pacific Railroad Company, as aforesaid, it then and long prior thereto, well knew, and its officers well [35] knew and had actual knowledge at said time, of the existence of mineral and petroleum in paying quantities in all the lands involved in this suit, and now claimed by your orator and said defendant well knew at the time said patent was issued and accepted by it, and long prior thereto, that said lands involved in this suit and every quarter section thereof contained mineral oils, and other kindred minerals, and that said lands were and now are more valuable for mining purposes, and the mineral oils therein, than for agricultural purposes, or for any other purposes.

Your orators further insist and submit, that defendant, the Southern Pacific Railroad Company does refuse to permit any of the lands involved in this suit to be exploited, developed, or improved in any way, manner, *shap* or form, and the Southern Pacific Company of Kentucky, is conspiring, and confederating with the Southern Pacific Railroad Company of California and the Kern Trading and Oil Company and all of their officers, directors, agents, representatives, and other defendants herein,

to withhold said lands from exploitation, and development against the well-defined common rights of your orators and the citizens of the United States of America to locate and develop said lands, under said exclusion, exception and reservation, in said Acts of Congress, and patent contained, and the mining laws of the United States of America, and your orators further insist and submit that neither the defendant, the Southern Pacific Company, the Southern Pacific Railroad Company, nor the Kern Trading and Oil Company, nor their associates, confederates, directors, agents, representatives, officers, co-conspirators, or *other* others connected with them, have any right or authority to withhold said lands from development and exploitation by your orators, or to retard the progress and growth of the community wherein said lands are situated. [36]

VIII.

And your orators further show unto your Honors, that your orators, and certain grantors herein named did in Fresno and Kings County, State of California, on the 19th day of June, 1909, and at divers other times, as is more particularly herein set forth and stated, duly take possession of, and did duly locate, and duly claim, under the mining laws of the United States of America, in good faith, the following described placer mining claims within the limits of said grant which said claims were located as follows, and said notices of locations were, and are, together with the endorsements therein, in words and figures as follows, to wit:

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the under-

signed have this day located and claimed, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest Corner of Section 5, Township 21 South, Range 15 East, M. D. B. & M. and running South 40 chains, thence East 40 chains; thence North 40 chains; thence West 40 chains to point of beginning, this being the Northwest quarter of Section 5, Township 21, South, Range 15, East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum, and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the New View Mining Claim. It is situated in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

T. S. MINOT.

Z. L. PHELPS.

JAMES MAYNARD, Jr. [37]

A. M. ANDERSON.

GEORGE D. ROBERTS.

NEWTON A. JOHNSON.

DAVE EWING.

D. M. SPEED.

S. J. GALLAGHER,

Witness to posting.

[Endorsed] : Filed for Record at the Request of D. S. Ewing, June the 21st, 1909, at 17 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining

Claim, pg. 80, Fresno County Records. R. N. Barstow, County Recorder.
8960.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows. Commencing at the Southeast Corner of Section 7, Township 21 South, Range 15 East, M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains to point of beginning, this being the Southeast quarter of Section 7, Township 21, South, Range 15, East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Zeb Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 21st day of June, 1909.

R. M. COOK.

Z. L. PHELPS.

T. S. MINOT.

NEWTON A. JOHNSON.

I. W. ALEXANDER.

GUY H. SALISBURY. [38]

JAS. MAYNARD, Jr.

D. M. SPEED.

R. M. COOK,

Witness to posting.

[Endorsed]: Filed for record at the request of Everts & Ewing, June 21, A. D. 1909, at 6 min. past 11 o'clock A. M.; and recorded in volume 15 of Mining Claims, pg. 108, Fresno County Records. R. M. Barstow, County Recorder. By W. H. Bates, Deputy Recorder.

8995.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day —— and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows: Commencing at the Northeast Corner of Section 11, Township 20, South, Range 15, East, M. D. B. & M., and running South 40 chains, thence West 40 chains, thence North 40 chains, thence East 40 chains, to the point of beginning, this being the Northeast quarter of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Eleven Mining Claim. Is situate in Fresno County, State of California, Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

T. J. TURNER.

E. M. SCOTT.

D. M. SPEED.

M. E. COOK.

M. J. COREY.

P. W. CYPHER.

GEO. W. WARNER. [39]

CLAUD BARNES.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing June the 21st, A. D. 1909, at 25 min. past 8 o'clock A. M. and recorded in Vol. 15, of Mining Claims, pg. 81, Fresno County Records. R. N. Barstow, County Recorder.

8968.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest Corner of Section 31, Township 20 South, Range 15, East, M. D. B. & M., and running South 40 chains, thence East 40 chains, thence North 40 chains, thence West 40 chains, to point of beginning, this being the Northwest quarter of section 31, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acrea or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the James Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on

the ground, this 19th day of June, 1909.

CHARLES JAMES.

CHALK ROBERTS.

ROBERT RENDALL.

HENRY C. KERR.

GEO. EAGLE.

JAMES WARD.

A. M. ANDERSON.

J. L. D. WALP. [40]

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing June 21st, A. D. 1909, at 3 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 65, Fresno County Records. R. N. Barstow, County Recorder.

8946.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest Corner of Section 29, Township 20, South, Range 15 East, M. D. B. & M., and running East 40 chains, thence South 40 chains, thence West 40 chains, thence North 40 chains to a point of beginning, this being the Northwest quarter of Section 29, Township 20 South, Range 15 East, M. D. B. & M. and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Swartzlander Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 19th day of June, 1909.

J. W. SWARTZLANDER
N. M. SALISBURY.
HENRY BARADA.
S. J. GALLAGHER.
E. N. AYERS.
GEORGE D. ROBERTS.
O. D. LOFTUS.
W. W. AYERS.

Witness:

W. M. JOHNSON. [41]

[Endorsed]: Filed for record at the request of D. S. Ewing June 21st, A. D. 1909, at 5 min. past 8 o'clock A. M., and recorded in Vol. 15, of Mining Claims, pg. 63, Fresno County Records. R. N. Barstow, County Recorder.

8948

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Southeast Corner of Section 29, Township 20 South, Range 15 East M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40

chains to a point of beginning this being the South-east quarter of Section 29, Township 20 South, Range 15 east M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and Mining purposes and uses.

This claim shall be known as the Marshback Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

SAM MARSHBACK,

W. H. CROSIOR.

J. H. ROBERTSON.

P. C. TAYLOR.

HARRY GREENLEAF.

DAVE EWING.

A. M. ANDERSON.

WM. M. JONSON.

Witness:

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing [42] June 21st, 1909, at 4 min. past 8 o'clock, A. M., and recorded in Vol. 15 of Mining Claims, pg. 64, Fresno County Records. R. N. Barstow, County Recorder.

8947.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States the following Placer Claim, bounded and described as follows:

Commencing at the quarter corner, west line of Section 21, Township, 20 South, Range 15 East M. D. B. & M., and running 20 chains, South; thence East 80 chains; thence North 20 chains; thence West 80 chains to point of beginning; this being the North half of section 31, Township 20, South, Range 15 East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Tommy Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this 19th day of June, 1909.

T. J. TURNER.

E. M. SCOTT.

M. E. COOK.

M. J. COREY.

P. W. CYPHER.

GEO. W. WARNER.

CLAUD BARNES.

W. H. FRASER.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 1 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 67, Fresno County Records. R. N. Barstow, County Recorder.

8944. [43]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the under-

signed have this day located and claim under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Southeast Corner of Section 11, Township 20 South, Range 15 East M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains, to point of beginning, this being the Southwest quarter of Section 11, Township 20 South, Range 15, East, M. D. B. & M. and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This Claim shall be known as the Fraser Clan Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

W. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,
FRANK PROVOST,
SAM MARSHBACK,
H. R. CORZIER,
J. H. ROBERTSON,
P. C. TAYLOR,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 24 min. past

8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 73, Fresno County Records. R. N. Barstow, County Recorder.

8967. [44]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest Corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and running South 40 chains, thence North 40 chains, thence West 40 chains, to point of beginning, this being the Northwest quarter of Section 11, Township 20, South, Range 15, East, M. D. B. & M. and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Greenleaf Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

HARRY GREENLEAF,
DAVE EWING,
N. M. SALISBURY,
J. W. SWARTZLANDER,
HENRY BARADA,
E. N. AYERS,

W. M. JOHNSON,
GEORGE D. ROBERTS,
Locators.

Witness to posting,
S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 23 min. past 8 o'clock A. M., and recorded in Vol. 15, pg. 90, Fresno County Records. R. N. Barstow, County Recorder.
8966. [45]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Southwest Corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to point of beginning this being the Southwest Quarter of Section 5, Township 20, South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This Claim shall be known as the Southern Five Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

CHARLES JAMES.
CHALK ROBERTS.

ROBERT RENDALL.
HENRY C. KERR.
GEORGE EAGLE.
JAMES WARD.
A. M. ANDERSON.
J. L. D. WALP.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 18 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 82, Fresno County Records. R. N. Barstow, County Recorder.

8961. [46]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Northeast Corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running South 40 chains, thence West 40 chains, thence North 40 chains, thence East 40 chains to point of beginning this being the Northeast quarter of Section 5, Township 20 South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This Claim shall be known as the Five Oil Mining

Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

J. M. ROBERTSON,
P. C. TAYLOR,
H. R. CROZIER,
JAMES WARD,
T. J. TURNER,
E. M. SCOTT,
M. J. COREY,
P. W. CYPHER,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 21 min. past 8 o'clock A. M., and recorded in Volume 114 of Mining Claims, pg. 392, Fresno County Records. R. N. Barstow, County Recorder.

8964. [47]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southeast Corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running North 20 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains to point of beginning, this being the Southeast quarter of Section 5, Township 20 South, Range 15, East,

M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances, contained therein, also water for domestic and mining purposes and uses.

This Claim shall be known as the George W. Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

GEORGE W. WARNER.

CLAUD BARNES.

D. M. SPEED.

DAVE ISHLMAN.

J. W. SWARTZLANDER.

HENRY BARADA.

E. N. AYRES.

N. M. SALISBURY.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, 1909, A. D., at 20 min. past 8 o'clock A. M., and recorded in Vol. 14 of Mining Claims, pg. 403, Fresno County Records. R. N. Barstow, County Recorder.

8963. [48]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN THAT the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Southwest Corner of Section 29, Township 20 South, Range 15, East, M.

D. B. & M., and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to a point of beginning, this being the Southwest quarter of Section 29, Township 20 South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Bacon Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
E. N. AYERS,
CHALK ROBERTS,
ROBERT RENDALL,
HENRY C. KERR,
J. L. D. WALP,

Locators.

Witness: W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 6 min. past 8 o'clock A. M., and Recorded in Vol. 15 of the Mining Claims, pg. 74, Fresno County Records. R. N. Barstow, County Recorder.

8949. [49]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this *this* day located and claim, under

the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Northeast Corner of Section 31, Township 20 South, Range 15, East, M. D. B. & M., and running West 40 chains, thence South 40 chains, thence East 40 chains, thence North 40 chains to the point of beginning, this being the Northeast quarter of section 31, Township 20, South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and Mining purposes and uses.

This claim shall be known as the Johnson Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

WM. JOHNSON.

S. J. GALLAGHER.

GEORGE D. ROBERTS.

O. D. LOFTUS.

W. W. AYERS.

JOHN W. BOURDETTE.

WALTER BACON.

H. E. AYERS.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 2 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 66, Fresno County Records. R. N. Bar-

stow, County Recorder.

8945. [50]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Southwest Corner of Section 5, Township 21 South, Range 15 East, M. D. B. & M., and running North 40 chains, thence 40 chains, East, thence South 40 chains, thence West 40 chains to point of beginning, this being the Southwest quarter of Section 5, Township 21 South Range 15, East, M. D. B. & M., containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the New West Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 19th day of June, 1909.

WALTER BACON,

H. E. AYERS.

ROBERT RENDALL.

HENRY C. KERR.

Z. L. PHELPS.

T. S. MINOT.

N. M. SALISBURY.

J. L. D. WALP.

S. J. GALLAGHER,

Witness to posting.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, 1909, at 16 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 72, Fresno County Records. R. N. Barstow, County Recorder.

8959. [51]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Northwest Corner of Section 5, Township 20 South, Range 15, East, M. D. B. & M., and running South 40 chains, thence East 40 chains, thence North 40 chains, thence West 40 chains to point of beginning, this being the boundary of the Northwest quarter of Section 5, Township 20, South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Big Five Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

W. M. JOHNSON,
S. J. GALLAGHER,
GEORGE D. ROBERTS,
O. D. LOFTUS,
W. W. AYERS,

JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing June 21st, A. D. 1909, at 19 min. past 8 o'clock A. M., and recorded in Vol. 14, pg. 381, Fresno County Records. R. N. Barstow, County Recorder.

8962. [52]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Ground, viz.:

Commencing at the Southwest Corner of Section 17, Township 20 South, Range 15, East, M. D. B. & M., thence North 40 chains, thence at right angles East 40 chains, thence at right angles South 40 chains, thence at right angles, West 40 chains, to place of beginning and containing according to U. S. Surveyor, 160 acres.

The above claim is located by the undersigned locators as an association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals and all minerals found therein or thereon, and water for domestic

mining and other purposes, and a copy of this notice was duly posted on said claim on the 19th day of June, 1909. And said claim is being the Southwest quarter, situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Eagle Oil Placer Mining Claim. Located 19th day of June, 1909.

GEORGE EAGLE.

JAMES WARD.

J. L. D. WALP.

E. M. SCOTT.

E. N. AYERS.

A. M. JOHNSON.

T. J. TURNER.

M. E. COOKE.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant's Mining District, County. Dated 190..... recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 11 min. past 8 o'clock A. M., Vol. 14 of Mining Claims, at page 379 et seq., Fresno County Records. R. N. Barstow, Recorder.

8954. [53]

NOTICE OF LOCATION PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned, Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining ground, viz.: Commencing at the Southeast Corner of Section 19, Township

20 South, Range 15 East, M. D. B. & M., thence North 40 chains, thence at right angles West 40 chains, *thence at right angles West 40 chains*, thence at right angles South 40 chains, thence at right angles East 40 chains to the place of beginning, and containing according to U. S. Survey 160 acres.

The above claim is located by the undersigned locators as an association of eight persons, and contains eight Placer Claims, said claim is located for the purpose of *holding* and developing all Petroleum, Asphaltum, and all kindred minerals and all minerals found therein or thereon, and water for domestic, mining and other purposes, and the copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim is—being the Southeast quarter situate in the Coalinga Mining District, County of Fresno, State of California. This Claim shall be known as the Tom Oil Placer Mining Claim.

Located 19th day of June, 1909.

T. J. TURNER.

M. E. COOK.

P. J. CYPHER.

CLAUD BARNES.

E. M. SCOTT.

M. J. COREY.

GEORGE W. WARNER.

W. H. FRASER.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location, Claimant. Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 13 min. past 8 o'clock A. M., in Vol. 14

of Mining Claims, page 390 et seq., Fresno County Records. R. N. Barstow, Recorder.

8956. [54]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.: Commencing at the Northeast Corner of Section 19, Township 20, South, Range 15 East, M. D. B. & M., thence running West 40 chains, thence at right angles South 40 chains, thence at right angles 40 chains, East; thence at right angles North 40 chains to place of beginning and containing according to U. S. Surveys 160 acres, being the Northeast quarter.

The above Claim is located by the undersigned locators as an association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum, and all kindred minerals and all minerals found therein or thereon, and water for domestic, mining, and other purposes, and a copy of this notice was duly posted on said claim on the 19th day of June, 1909, and the said claim is situate in Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Old Oil Placer Mining Claim. Located day of June, 1909.

CHARLES JAMES.

CHALK ROBERTS.

HENRY C. KERR.

JAMES WARD.

O. D. LOFTUS.

ROBERT RENDALL.

GEO. EAGLE.

J. L. D. WALP.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated, 190 Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 14 min. past 8 o'clock A. M., in Vol. 14 of Mining Claims, page 382 et seq., Fresno County Records. R. N. Barstow, Recorder.

8957. [55]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.: Commencing at the Northeast Corner of Section 17, Township 20, South, Range 15 East, M. D. B. & M., thence West 40 chains, thence at right angles South 40 chains, thence at right angles East 40 chains, thence at right angles North 40 chains to the place of beginning, containing according to U. S. Surveys, 160 acres.

The above Claim is located by the Undersigned Locators as an Association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum,

Asphaltum, and kindred minerals, and all minerals therein and thereon, and water for domestic, mining and other purposes, and a copy of this notice was duly posted on said Claim on the 19th day of June, 1909, and said Claim is.....

Being in the Northeast quarter, situate in the Coalinga Mining District, County of Fresno, State of California.

This Claim shall be known as the Ishlman Oil Placer Mining Claim, located 19th day of June, 1909.

DAVE ISHLMAN.

FRANK PROVOST.

H. R. CROZIER.

P. C. TAYLOR.

ASH SERVICE.

SAM MARSHBACK.

J. M. ROBERTSON.

HARRY GREENLEAF.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District County. Dated, 190..... Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 9 min. past 8 o'clock A. M., in Vol. 15 of Mining Claims, at page 75 et seq., Fresno County Records. R. N. Barstow, Recorder.

8952. [56]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the

United States, have this day located the following described Mining Ground, viz.:

Commencing at the Northeast Corner of Section 29, Township 20 South, Range 15, East, M. D. B. & M., being the Northeast quarter. Thence West 40 chains, thence at right angles South 40 chains, thence at right angles East 40 chains, thence at right angles North 40 chains, to the place of beginning and containing according to U. S. Surveys 160 acres.

The above claim is located by the undersigned Locators, as an Association of eight persons, and contains eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals, and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was posted on said claim on the 19th day of June, 1909, and said claim is situate in the Coalinga Mining District, County of Fresno, State of California.

This Claim shall be known as the Corey Oil Placer Mining Claim. Located 19th day of June, 1909.

M. J. COREY.

E. N. AYERS.

GEO. W. WARNER.

W. H. FRASER.

M. E. COOK.

P. W. CYPHER.

CLAUDE BARNES.

DAVE ISHLMAN.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location, Claimant. Mining District County. Dated, 190..... Recorded at the request D. S. Ewing. June 21st, A. D. 1909, at 7 min. past 8 o'clock A. M., in Vol. 15 of Mining Claims, pg. 84, Fresno County Records. R. N. Barstow, Recorder.

8950. [57]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.: Commencing at the Northwest Corner of Section 17, Township 20 South, Range 15 East, M. D. B. & M., thence South 40 chains, thence East at right angles 40 chains, thence at right angles North 40 chains, thence at right angles West 40 chains to the place of beginning and containing, according to the U. S. Survey 160 acres, being the Northwest quarter.

The above claim is located by the undersigned Locators as an Association of eight persons, and contains eight Placer Claims, said Claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals and all minerals found therein or thereon, and water for domestic mining and other purposes, and a copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim is situate in the Coalinga Mining District, County of Fresno, State of California.

This Claim shall be known as the Ayers Oil Placer Mining Claim. Located 19th day of June, 1909.

W. W. AYERS.

WALTER BACON.

CHARLES JAMES.

ROBERT RENDALL.

JNO. W. BOURDETTE.

H. E. AYERS.

CHALK ROBERTS.

HARRY C. KERR.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location, Claimant. Mining District, County. Dated 190..... Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 12 min. past 8 o'clock A. M., in Vol. 14, Mining Claim, page 402, Fresno County Records. R. N. Barstow, Recorder.

8955. [58]

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.:

Commencing at the Southwest Corner of Section 7, Township 20 South, Range 15 East, M. D. B. & M., being the Southwest quarter, thence North 40 chains, thence at right angles East 40 chains, thence at right angles South 40 chains, thence at right angles West 40 chains to place of beginning and containing

according to U. S. Survey 160 acres.

The above claim is located by the undersigned Locators, as an Association, of eight persons, and contains eight Placer Claims said claims is located for the purpose of holding and developing all Petroleum, Asphaltum and other kindred minerals and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was posted on said claim on the 19th day of June, 1909, and said claim is situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Bourdette Oil Placer Mining Claim. Located 19th day of June, 1909.

JNO. W. BOURDETTE.
WALTER BACON.
E. N. AYERS.
ASH SERVICE.
W. W. AYERS.
N. E. AYERS.
A. M. ANDERSON.
FRANT PROVOST.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated, 190. Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 8 min. past 8 o'clock A. M., in Vol. 15 of Mining Claims at [59] page 77 et seq., Fresno County Records. R. N. Barstow, Recorder.

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States have this day located the following described Placer Mining Grounds, viz.:

Commencing at the Southeast Corner of Section 17, Township 20 South, Range 15 East, M. D. B. & M., thence North 40 chains, thence at right angles West 40 chains, thence at right angles South 40 chains, thence at right angles East 40 chains to the place of beginning and containing according to the U. S. Survey 160 acres.

The above claim is located by the undersigned Locators as an Association of eight persons, and contains eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and all kindred minerals, and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim being the Southeast quarter situate in the Coalinga Mining District, County of Fresno, State of California.

This Claim shall be known as the Ewing Oil Placer Mining Claim. Located 19th day of June, 1909.

DAVE EWING.

J. W. SWARTZLANDER.

W. M. JOHNSON.

GEO. D. ROBERTS.

N. M. SALISBURY.

HENRY BARADA.

S. J. GALLAGHER.

O. D. LOFTUS.

Witness to posting,
W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, [60] County. Dated, 190.... Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 10 min. past 8 o'clock A. M., in Vol. 15 of Mining Claims, page 85, Fresno County Records. R. N. Barstow, Recorder.

8953.

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.:

Commencing at the quarter section corner in the West line of Section 19, Township No. 20, South of Range 15, East, M. D. B. & M., Fresno County, California, thence South 20 chains, thence at right angles East 40 chains, thence at right angles North 40 chains, thence at right angles West 40 chains, to the place of beginning, containing 80 acres as per U. S. Survey.

The above claim is located by the undersigned Locators as an Association of eight persons, and contains eight Placer claims. Said Claim is located for the purpose of holding and developing all Petroleum, Asphaltum and all kindred minerals and other minerals found therein or thereon, and water for domes-

tic, mining and other purposes, and a copy of this notice was duly posted on said claim on the 19th day of June, 1909. Being the North half of the Southwest quarter situate in the Coalinga Mining District, County of Fresno, State of California. This claim be known as the New Oil Placer Mining Claim. Located 19th day of June, 1909.

W. M. JOHNSON.

A. M. ANDERSON.

S. J. GALLAGHER.

GEO. D. ROBERTS.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated, 190.

[61]

Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 15 min. past 8 o'clock A. M., in Vol. 15 of Mining Claims at page 91 et seq., Fresno County Records. R. N. Barstow, Recorder.
8958.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the Quarter Corner in east line of Section 7, Township 21 South, Range 15, East, M. D. B. & M., and running North 20 chains, thence West 80 chains, thence South 20 chains, thence East 80 chains, to point of beginning, this being the South

half of Section 7, Township 21 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Seven Oil Mining Claim is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 21st day of June, 1909.

Z. L. PHELPS,
A. M. ANDERSON,
E. M. SCOTT,
M. J. COREY,
R. M. COOKE,
T. S. MINOT,
WALTER BACON,
W. W. AYERS,

Locators.

R. M. COOK,

Witness to posting.

[Endorsed]: Filed for Record at the request of Everts & Ewing, June 21st, A. D. 1909, at 5 min. past 8 o'clock A. M., and recorded [62] in Vol. 15, of Mining Claims, pg. 107, Fresno County Records. R. N. Barstow, County Recorder. By W. H. Bates, Deputy Recorder.

8994.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following de-

scribed Placer Claim, bounded and described as follows:

Commencing at the Southwest corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M. and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to point of beginning, this being the Southwest quarter of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Greater Mining Claim. Is situate in Fresno County, State of California.

Located and a copy of this notice posted on the ground this 19th day of June, 1909.

S. J. GALLAGHER,
D. M. SPEED,
O. D. LOFTUS,
W. W. AYERS,
JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
CHALK ROBERTS,

Locators.

Witness to posting,

S. J. GALLAGHER. [63]

[Endorsed]: Filed for Record at the request of D. S. Ewing June 21st, A. D. 1909, at 22 min. past 8 o'clock A. M., and recorded in Vol. 14 of Mining

Claims, pg. 384, Fresno County Records. R. N. Barstow, County Recorder.
8965.

NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.:

Commencing at the Southwest corner of Section 7, Township 21, South, Range 15 East, M. D. B. & M., and running thence North 40 chains, East 40 chains, South 40 chains, thence West 40 chains to point of beginning, being Lots No. 3, No. 4, No. 5, No. 6 according to U. S. Surveys, containing 160 acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses, situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Buster Oil Placer Mining Claim, Located 21st day of June, 1909.

T. J. TURNER.

G. W. WARNER.

H. R. CROZIER.

Z. L. PHELPS.

P. W. CYPER.

W. H. FRASER.

DAVE EWING.

GEO. D. ROBERTS.

Witness to posting,

R. M. COOK.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated, 190..... Recorded at the request of Everts & Ewing, June 21st, A. D. 1909, at 7 min. past 11 o'clock A. M., in Vol. 15 of Mining Claims, at page 86, Fresno County Records. R. N. Barstow, Recorder. By W. H. Bates, Deputy Recorder.

8996 [64]

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southeast corner of Section 15, Township 23 South, Range 17 east, M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains to point of beginning, this being the Southeast quarter of Section 15, Township 23 South, Range 17, East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Dave Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

DAVE EWING,
GUY H. SALISBURY,

J. W. SWARTZLANDER,
HENRY BARADA,
E. N. AYERS,
W. M. JOHNSON,
S. J. GALLAGHER,
GEO. D. ROBERTS,

Locators.

Witness to posting,

S. J. GALLAGHER.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: [65]

Commencing at the Southeast corner of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains to point of beginning, this being the Southeast quarter of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and containing one *and* hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the M. J. C. Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the

ground this the 19th day of June, 1909.

M. J. COREY,
P. W. CYPHER,
GEO. W. WARNER,
CLAUD BARNES,
M. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,
FRANK PREVOST,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st A. D. 1909, at 19 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 459, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: [66]

Commencing at the Northeast corner of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and running South 40 chains, thence West 40 chains, thence North 40 chains, thence East 40 chains to point of beginning this being the Northeast quarter of Section 25, Township 23 South Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic

and mining purposes and uses.

This claim shall be known as the Kerr Oil Mining Claim. Is situated in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

HENRY C. KERR,
GEORGE EAGLE,
JAMES WARD,
A. M. ANDERSON,
J. L. D. WALP,
T. J. TURNER,
E. M. SCOTT,
M. E. COOKE,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 18 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 459, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southwest corner of Section 23, Township [67] 23 South, Range 17 East M. D. B. & M., and running North 40 chains, thence 40 chains, East, thence South 40 chains, thence West 40 chains to point of beginning, this being the South-

west quarter Section 23, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This Claim shall be known as the Loftus Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

O. D. LOFTUS,
W. W. AYERS,
JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
CHARLES JAMES,
CHALK ROBERTS,
ROBERT RENDALL,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at request of A. M. Anderson, June 21st, A. D. 1909, at 17 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 458, Kings County Records. Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest corner of Section 23, Township 23 South, Range 17 East, M. D. B. & M., and running South 40 [68] chains, thence East 40 chains, thence North 40 chains, thence West 40 chains to point of beginning, this being the Northwest quarter of Section 23, Township 23 South, Range 17 East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the J. W. Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

J. M. SWARTZLANDER,
HENRY BARADA,
E. N. AYERS,
D. M. SPEED,
W. M. JOHNSON,
S. J. GALLAGHER,
O. D. LOFTUS,
GEO. D. ROBERTS,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 16 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 458, Kings County Records.
Jas. M. Bowman, Recorded.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer claim, bounded and described as follows:

Commencing at the Northwest corner of Section 15, Township 23, South, Range 17, East, M. D. B. & M., and running South 40 chains, thence East 40 chains, thence North 40 chains, thence [69] West 40 chains to point of beginning, this being the Northwest quarter of Section 15, Township 23 South, Range 17 East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Roberts Oil Mining Claim. Is situated in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

GEORGE D. ROBERTS,
O. D. LOFTUS,
W. W. AYERS,
JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
CHAS. JAMES,
CHALK ROBERTS,

Locators.

Witness to posting,
S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 12 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 456. Kings County Records. Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southeast corner of Section 23, Township 23, South Range 17, East M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains to point of beginning, this being the Southeast quarter of Section 23, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less. [70]

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Prevost Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

FRANK PREVOST,
SAM MARSHBACK,
H. R. CROZIER,
J. M. ROBERTSON,
P. C. TAYLOR,

HARRY GREENLEAF,

DAVE EWING,

N. M. SALISBURY,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D., 1909, at 15 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 457, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southwest corner of Section 25, Township 23 South, Range 17 East, M. D. B. & M. and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to point of beginning, this being the Southwest quarter of Section 25, Township 23 South, Range 17 East M. D. B. & M., and containing one hundred and sixty acres or less. [71]

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Barada Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the

ground this the 19th day of June, 1909.

HENRY BARADA,
E. W. AYERS,
D. M. SPEED,
W. M. JOHNSON,
S. J. GALLAGHER,
GEORGE D. ROBERTS,
O. D. LOFTUS,
W. W. AYERS,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 21 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 460, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest corner *corner* of section 25, Township 23 South, Range 17 East, M. D. B. & M., and running South 40 chains, thence East 40 chains, thence North 40 chains, thence West 40 chains to the point of beginning, this being the Northwest quarter of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred sub-

stances [72] contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Uncle Sam Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

SAM MARSHBACK,
H. R. CROZIER,
J. H. ROBERTSON,
P. C. TAYLOR,
HARRY GREENLEAF,
DAVE EWING,
GUY SALISBURY,
J. W. SWARTZLANDER,
Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 20 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 460, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northeast corner of Section 15, Township 23 South, Range 17 East, M. D. B. & M., and running South 40 chains, thence West 40 chains,

thence North 40 chains, thence East 40 chains to point of beginning this being the Northeast quarter of section 15, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. [73]

This claim shall be known as the Fifteen Oil Mining Claim. Is situate in Kings County, State of California. Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

DAVE ISHLMAN,
ASH SERVICE,
FRANK PREVOST,
SAM MARSHBACK,
H. R. CROZIER,
W. M. JOHNSON,
P. C. TAYLOR,
HARRY GREENLEAF,
Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 10 min. past 8 o'clock A. M., in Vol. 3, Miscel., page 455, Kings County Records. Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following de-

scribed Placer Claim, bounded and described as follows:

Commencing at the Northeast corner of Section 23, Township 23 South, Range 17 East, M. D. B. & M., and running South 40 chains, thence West 40 chains, thence North 40 chains, thence East 40 chains to point of beginning, this being the Northeast quarter of Section 23, Township 23, Range 17, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. [74]

This claim shall be known as the Cooke Oil Mining Claim. Is situate in Kings County *County*, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

M. E. COOKE,
M. J. COREY,
P. W. CYPHER,
GEO. W. WARNER,
CLAUD BARNES,
W. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,

Locators.

Witness to posting.

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 14 min. past 8 o'clock, in Vol. 3

of Miscel. Records, page 457, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Southeast corner of Section 31, Township 23, South, Range 18, East, M. D. B. & M., and running North 40 chains, thence West 40 chains, thence South 40 chains, thence East 40 chains, to point of beginning, this being the Southeast quarter of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Ward Oil Mining Claim. Is situate in Kings County, State of California. [75]

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

JAMES WARD,
A. M. ANDERSON,
J. L. D. WALP,
T. J. TURNER,
E. M. SCOTT,
M. E. COOKE,

M. J. COREY,
P. W. CYPHER,
Locators.

Witness to posting,
S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 8 min. past 8 o'clock A. M., in Vol. 3 Miscel., page 454, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southwest corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to point of beginning this being the Southwest quarter of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the J. M. R. Oil Mining Claim.

Is situate in Kings County, State of California.
Located, and a copy of this notice posted on the

ground [76] this the 19th day of June, 1909.

J. M. ROBERTSON,
P. C. TAYLOR,
HARRY GREENLEAF,
DAVE EWING,
N. W. SALISBURY,
J. W. SWARTZLANDER,
HENRY BARADA,
D. M. SPEED,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 9 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 454, Kings County Records.
Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northwest corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and running South 40 chains, thence East 40 chains, thence North 40 chains, thence West 40 chains to point of beginning, this being the Northwest quarter of Section 31, Township 23 South, Range 18 East M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred sub-

stances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the George W. Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909. [77]

GEO. W. WARNER.

CLAUD BARNES.

W. H. FRASER.

DAVE ISHLMAN.

ASH SERVICE.

FRANK PREVOST.

SAM MARSHBACK.

H. R. CROZIER.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 6 min. past 8 o'clock A. M., in Vol. 3 Miscel., Kings County Records. Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the Northeast corner of Section 31, Township 23, South, Range 18, East, M. D. B. & M., and running South 40 chains, thence West 40 chains, thence North 40 chains, thence East 40 chains

to point of beginning, this being the Northeast quarter of Section 31, Township 23, South, Range 18 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Thirty One Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

JNO. W. BOURDETTE,
WALTER BACON, [78]
H. E. AYERS,
CHAS. JAMES,
CHALK ROBERTS,
ROBERT RENDALL,
HENRY C. KERR,
GEORGE EAGLE,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 7 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 453, Kings County Records. Jas. M. Bowman, Recorder.

LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the

Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the Southwest of Section 15, Township 23 South, Range 17, East, M. D. B. & M., and running North 40 chains, thence East 40 chains, thence South 40 chains, thence West 40 chains to point of beginning, this being the Northwest quarter of Section 15, Township 23, South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic purposes and uses.

This claim shall be known as the Rendall Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

ROBERT RENDALL,
HENRY C. KERR,
GEORGE EAGLE,
JAMES WARD,
A. M. ANDERSON, [79]
J. L. D. WALP,
T. J. TURNER,
E. M. SCOTT,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 13 min. past 8 o'clock A. M., in

Vol. 3 of Miscel., page 456, Kings County Records.
Jas. M. Bowman, Recorder.

And your orators further say, that said notices of location were duly filed, in the manner prescribed by law, for record, and were duly recorded in the office of the County Recorders of Fresno and Kings Counties, State of California, at the time and on the dates in the endorsements thereon and therein respectfully set forth and stated; and that none of said locations nor the records of the same, nor any, or either of them, have ever been relinquished, waived, or cancelled, but now are, and have been, at all times in full force and effect.

VIII $\frac{1}{2}$.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith, Guy H. Salisbury and N. M. Salisbury, and E. M. Cooke, P. W. Cypher and Frank Prevost, the original locators of the hereinafter described Placer Mining Claims, bargained, sold, quitclaimed, transferred and conveyed to Fred E. Windsor all the rights, title, claim, interest and estate in and to said certain Placer Mining Claims set forth in this bill, known and described as follows to wit: . . .

The Zeb Mining Oil Claim. Commencing at the southeast corner of Section 7, Township 21 south, Range 15 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, and being the southeast quarter of Section 7, Township 21 south, Range [80] 15 east, M. D. B. & M., and con-

taining one hundred and sixty acres or less, and filed for record in Vol. 15 of Mining Claims, page 108, Fresno County Records, No. 8995.

Also the Eleventh Mining Claim. Commencing at the northeast corner of Section 11, Township 20 south, Range 15 east, M. D. B. & M., and running south 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains to the point of beginning. This being the northeast quarter of Section 11, Township 20 south, Range 15 east M. D. B. & M., and containing one hundred and sixty acres or less.

Also the Swartzlander Oil Mining Claim. Commencing at the northwest corner of Section 29, Township 20 south, Range 15 east, M. D. B. & M., and running east 40 chains, thence south 40 chains, thence west 40 chains, thence north 40 chains to the point of beginning. This being the northwest quarter of Section 29, Range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the Tommy Oil Mining Claim, commencing at the quarter west line of Section 31, Township 20 south, Range 15 east, M. D. B. & M., and running south 20 chains, thence east 30 chains, thence north 20 chains, thence west 80 chains to point of beginning. This being the north half of the south half of Section 31, Township 20 south, Range 15 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the Greenleaf Mining Claim. Commencing at the northwest corner of Section 11, Township 20 south, Range 15 east, M. D. B. & M., and running south 40 chains, thence east 40 chains thence north

40 chains; thence west 40 chains to the point of beginning. This being the northwest quarter of Section 11, Township 20 south, Range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the George W. Mining Claim. Commencing at the [81] southeast corner of Section 5, Township 20 south, Range 15 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this beinf the southeast quarter of Section 5, Township 20 south, Range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the New West Mining Claim. Commencing at the southwest corner of section 5, Township 30 south, Range 15 east, M. D. B. & M., and running north 40 chains, thence east 40 chains, thence south 40 chains, thence west 40 chains to point of beginning, being the southwest quarter of Section 5, Township 20 south, Range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the Eagle Oil Placer Mining Claim. Commencing at the southwest corner of Section 19, Township 20 south, Range 15 east, M. D. B. & M., thence north 40 chains, thence at right angles east 40 chains, thence at right angles south 40 chains, thence at right angles west 40 chains to place of beginning, containing one hundred and sixty acres or less.

Also the Tom Oil Placer Mining Claim. Commencing at the southeast corner, Section 19, Township 20 south, Range 15 east, M. D. B. & M., thence

north 40 chains, thence at right angles west 40 chains, thence at right angles south 40 chains, thence at right angles east 40 chains to place of beginning, containing one hundred and sixty acres.

Also the Corey Oil Placer Mining Claim. Commencing at the northeast corner of Section 29, Township 20 south, Range 15 east, M. D. B. & M., being the northeast quarter; thence west 40 chains, thence at right angles south 40 chains, thence at right angles east 40 chains, thence at right angles north 40 chains to place of beginning, containing one hundred and sixty acres. [82]

Also the Ewing Oil Placer Mining Claim. Commencing at the southeast corner of Section 17, Township 20 south, Range 15 east, M. D. B. & M., thence north 40 chains, thence at right —— west 40 chains; thence at right angles south 40 chains; thence at right angles east 40 chains to place of beginning, containing one hundred and sixty acres.

Also the Dave Oil Mining Claim. Commencing at the southeast of section 15, Township 23 south, Range 17 east, M. D. B. & M., and running north 40 chains; thence west 40 chains, thence south 40 chains, thence east 40 chains, to place of beginning, being the southeast quarter of Section 15, Township 23 south, Range 15 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the Kerr Oil Mining Claim. Commencing at the northeast corner of Section 23, Township 23 south, Range 17 east, M. D. B. & M., and running south 40 chains, thence west 40 chains, thence north 40 chains; thence east 40 chains to point of beginning,

being the northeast quarter of section 25, Township 23 south, Range 17 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also Prevost Oil Mining Claim. Commencing at the southeast corner of section 25, Township 23 south, Range 17 east, M. D. B. & M., and running north 40 chains; thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, being the southeast quarter of Section 23, Township 23 south, Range 17 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the Uncle Sam Oil Mining Claim. Commencing at the northwest corner of section 25, Township 23 south, Range 17 east, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains to point of beginning, being the northwest quarter of Section 25, Township 23 south, Range 17 east, M. D. B. & M., containing one hundred and sixty [83] acres or less.

Also the Cooke Oil Mining Claim. Commencing at the northeast corner of Section 23, Township 23 south, Range 17 east, M. D. B. & M., and running south 40 chains; thence west 40 chains, thence north 40 chains, thence east 40 chains to point of beginning, being the northeast quarter of Section 23, Township 23 south, Range 17 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the Ward Oil Mining Claim. Commencing at the southeast corner of Section 31, Township 23 south, Range 13 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south

40 chains, thence east 40 chains to point of beginning, being the southeast quarter of Section 31, Township 23 south, Range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the J. M. R. Oil Mining Claim. Commencing at the southwest corner of Section 31, Township 23 south, Range 18 east, M. D. B. & M., and running north 40 chains; thence east 40 chains, thence south 40 chains; thence west 40 chains to point of beginning, being the southwest quarter of Section 31, Township 23 south, Range 18 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also all the right, title, interest and estate of P. W. Cypher in and to the Five Oil Mining Claim, the Eleven Mining Claim, the Tom Oil Placer Mining Claim, the Corey Oil Placer Mining Claim, the Tommy Oil Mining Claim, the Cooke Oil Mining Claim, the M. J. C. Oil Mining Claim, the Ward Oil Mining Claim, and the Buster Oil Placer Mining Claim as is in this bill hereinbefore described.

Also all the right, title, interest and estate of Frank Prevost in and to the Bourdette Oil Placer Mining Claim, the Fraser Clan Mining Claim, the Ishlman Oil Placer Mining Claim, [84] the Fifteen Oil Mining Claim, the Prevost Oil Mining Claim, the M. J. C. Oil Mining Claim, the Geo. W. Oil Mining Claim, as is in this bill hereinbefore described.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith Ed. N. Ayres, John W. Bourdette, Walter Bacon, Dave

Ishlman, Chas. James, the original locators of the hereinafter described Placer Mining Claims, *bargain*, sold, quitclaimed, transferred and conveyed to James P. Sweeney, all the rights, title, claim, interest and estate in and to certain Placer Mining Claims set forth in this bill, known and described as follows to wit:

The George W. Mining Claim, Bourdette Oil Placer Mining Claim, Greenleaf Mining Claim, Eagle Oil Placer Mining Claim, Corey Oil Placer Mining Claim, Swartzlander Oil Mining Claim, Bacon Oil Mining Claim, Dave Oil Mining Claim, J. W. Oil Mining Claim, Barada Oil Mining Claim, Big Five Mining Claim, Greater Mining Claim, Ayers Oil Placer Mining Claim, Johnson Oil Mining Claim, Roberts Oil Mining Claim, Loftus Oil Mining Claim, Thirty-one Oil Mining Claim, New West Mining Claim, Seven Oil Mining Claim, Fraser Clan Mining Claim, Ishlman Oil Placer Mining Claim, Fifteen Oil Mining Claim, Cooke Oil Mining Claim, M. J. C. Oil Mining Claim, Southern Five Mining Claim, Old Oil Placer Mining Claim, James Oil Mining Claim as is in this bill hereinbefore described.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith W. W. Ayers, the original locator of the herein-after described Placer Mining Claims bargained, sold, quitclaimed, transferred and conveyed to Thomas Barrett, Sr., all the rights, title, claim, interest and estate in and to certain placer mining claims

set forth in this bill, known and described as follows to wit: [85]

The Big Five Mining Claim, Bourdette Placer Mining Claim, Greater Mining Claim, Ayers Placer Mining Claim, Swartzlander Mining Claim, Johnson Oil Mining Claim, Roberts Oil Mining Claim, *Roberts Oil Mining Claim*, Loftus Oil Mining Claim, Barada Oil Mining Claim, Seven Oil Mining Claim.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith H. R. Crozier, the original locator of the hereinafter described Placer Mining Claims, bargained, sold, quitclaimed, transferred and conveyed to W. W. Wickline, all his right, title, interest, claim and estate in and to certain Placer Mining Claims set forth in this bill, known and described as follows to wit:

The Five Oil Mining Claim, the Fraser Clan Mining Claim, Ishlman Oil Placer Mining Claim, Marshback Oil Mining Claim, Fifteen Oil Mining Claim, Prevost Oil Mining Claim, Uncle Sam Oil Mining Claim, Geo. W. Oil Mining Claim, Buster Oil Placer Mining Claim.

Your orators further state and show unto your Honors that prior to the commencement of this suit, for a valuable consideration and in good faith, George Eagle, the original locator of the hereinafter described Placer Mining Claims, bargained, sold, quitclaimed, transferred and conveyed to William M. Johnson, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Southern Five Mining Claim, Eagle Oil Placer Mining Claim, Old Oil Placer Mining Claim, James Oil Mining Claim, Rendall Oil Mining Claim, Kerr Oil Mining Claim, Thirty-one Oil Mining Claim.

Your orators further state and show unto your Honors that prior to the commencement of this suit, for a valuable consideration and in good faith, Henry C. Kerr, the original locator of there hereinafter described Placer *Placer* Mining Claim, bargained, sole, quitclaimed, transferred and conveyed to Milo L. Rowell, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Southern Five Mining Claim, Ayers Oil Placer Mining Claim, Old Oil Placer Mining Claim, James Oil Mining Claim, Bacon Oil Mining Claim, Kerr Oil Mining Claim, Rendall Oil Mining Claim, Thirty-one Oil Mining Claim, New West Mining Claim. [86]

Your orators further state and show unto your Honors that prior to the commencement of this suit, for a valuable consideration and in good faith, D. M. Speed, the original locator of the hereinafter described placer mining claims, bargained, sold quitclaimed, transferred and conveyed to W. Herbert Gates, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

George W. Mining Claim, Greater Mining Claim, Eleven Mining Claim, J. W. Oil Mining Claim, Barada Oil Mining Claim, J. M. R. Oil Mining Claim, New View Mining Claim, Zeb Oil Mining Claim.

Your orators further state and show unto your

Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith, T. J. Turner, the original locator of the hereinafter described placer mining claims, bargained, sold, quit-claimed, transferred and conveyed, to H. T. Faust, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Five Oil Mining Claim, Eleven Mining Claim, *Eleven Mining Claim*, Eagle Oil Placer Mining Claim, Tom Oil Placer Mining Claim, Tommy Oil Mining Claim, Rendall Oil Mining Claim.

And your orators further say unto your Honors, that Fred E. Windsor, Thomas Barrett, Sr., James P. Sweeney, W. W. Wickline, William M. Johnson, Milo L. Rowell, W. Herbert Gates, H. T. Faust are now the true and lawful owners and holders of all the title and estate of said grantors, original locators of said premises and Placer Mines conveyed as aforesaid.

IX.

And your orators further say unto your Honors, that they are now in actual possession of said lands hereinbefore described, under the mining laws of the United States of America, and [87] your orators further insist and submit that they are entitled to the exclusive use and possession of all of said lands, to do all assessment work thereon, subject, however, to the paramount title of the United States of America therein and thereto up to and until such time as your orators can obtain a patent thereto by the removal of, or the restriction of the operation of

the patent herein set forth and assailed, and your orators further say unto your Honors, in anticipation that, for and on account of the facts hereinbefore set forth, and all matters and things in this bill stated that it would be a vain, useless act on their part to apply for a patent to the duly constituted Federal authorities for the lands involved in this suit until the patent herein is restricted or controlled by the injunction arm of this Honorable Court.

X.

Your orators show and aver, that defendant The Southern Pacific Railroad Company and its confederates, and its fraudulent conduit, the Kern Trading and Oil Company, defendant herein, threatens to and will, unless restrained and enjoined, trespass upon the lands involved in this suit, and that said defendants will interfere with the possession of said lands by your orators by force, and violence, and with hired, vicious and desperate men, will prevent your orators from performing the necessary and lawful assessment work upon said lands, or from making further and proper discoveries of minerals or oil thereon.

The defendants, the Kern Trading and Oil Company, did willfully and knowingly, through one of its duly authorized agents, and officers, maliciously publish or did cause to be maliciously published, in the "California Oil World," a newspaper of general circulation, published at Bakersfield, Kern County, California, in July 1st, 1909, issue thereof the following unlawful, wicked and vicious threat. [88]

“RAILROAD TO PROTECT LANDS.

“Will not say whether with Rigs or Guns.

“Bakersfield, June 30.—A high official of the K. T. & O., who declined to permit his name to be used, asserted emphatically to-day that the Southern Pacific would protect all the lands that it owns that have been jumped.

“‘You may be fully assured’, said he, ‘that if any overt act is undertaken by the jumpers who have filed location notices on all the land of the company from Sunset through Coalinga, we will protect our property.’

“‘How will you protect it?’ he was asked. ‘With guns or drilling rigs?’

“‘We will protect it effectively,’ was the reply.”

And your orators further show and aver, that defendant, The Kern Trading and Oil Company, is meant by the letters and sign K. T. & O. in said article, in said newspaper, and defendant, The Kern Trading and Oil Company did in fact, intend it to be understood by those who read such article, and said article was and is understood by those who read it to mean, and it did and does mean, that defendant, The Kern Trading and Oil Company and its confederate, the Southern Pacific Railroad Company, would and will use deadly weapons to drive your orators off from, and away from the lands located by your orators, and claimed in this suit, thereby preventing your orators from doing their assessment work, as by law required, and obtaining patents. And defendants the Southern Pacific Railroad Company, and its confederates, the Kern Trading and Oil Company,

have made divers and sundry other vicious and unlawful threats, to divers persons, to the effect, that they, the said defendants, would take the law in their own hands to protest their so called pretended, and usurped claims in the lands involved in this suit, by firearms, and deadly weapons, committing murder, if necessary; and your [89] orators aver, that unless restrained and enjoined by the process of your Honorable Court said acts will be committed by said defendants and the damages and injuries so threatened will be irreparable, unless it please your Honors, the premises considered to grant unto your orators an interlocutory injunction pending the determination of this suit.

XI.

Your orators further aver and show unto your Honors, that each piece, parcel or tract of land involved in this suit is over the value of \$2,000.00, exclusive of interest and costs. And your orators in consideration thereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, and to save a multiplicity of suits and actions at law, and to the end, therefore, that the said defendants may, if they can (answer under oath being specially waived), and according to the best, and utmost of their several belief, fully true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by note hereunder written they are respectfully required to an-

swer; that is to say:

1st. Has the Southern Pacific Company a lease upon the roadbed and rolling stock of the Southern Pacific Railroad Company; if so, when does it expire, and what are the terms, covenants and consitions, and does it include in any way, or effect in any way, the land grant now held by defendant the Southern Pacific Railroad Company, under the Act of Congress approved July 27, 1866, and all Acts and Joint Resolutions amendatory thereof, and supplementary thereto.

2nd. Have you, or either of you, a copy of the agreement consolidating the Southern Pacific Railroad Company of California, [90] with the Southern Pacific Railroad Company of Arizona and New Mexico?

3rd. Will you please produce it or a true copy of the original?

4th. If you will not produce it, what is there contained in said agreement that you desire to conceal?

5th. What motive have you in concealing said agreement and why do you refuse to produce it?

6th. Please give the full and true names of all the stockholders in the defendant, the Kern Trading and Oil Company and state whether or not its stock is held in escrow and by whom and whose safe it is in and why it was put there, and in whose name?

7th. Please give the present occupation of the Directors of the Kern Trading and Oil Company.

8th. How long have they, each, worked for the Southern Pacific Railroad Company?

9th. What salary do they, each, receive from the

Southern Pacific Railroad Company?

10th. What salary do they, each, receive from the Kern Trading and Oil Company, as officers, or directors of that corporation?

11th. Please state who are now the trustees of the first mortgage on the land grant of 1866 and 1870 of defendant, the Southern Pacific Railroad Company of California.

12th. Please state who are now the trustees of the second and third mortgage upon the land grant of the Southern Pacific Railroad Company of California.

13th. Please state how many leases the Southern Pacific Company has made to the Kern Trading and Oil Company.

14th. Will you please furnish a copy of said leases and place the same on file with the papers in this case? [91]

15th. If not, why?

16th. What do you wish to conceal?

17th. Why did *you record* these leases with the respective Recorders of Fresno and Kings Counties, California, in the manner provided by law in the State of California, and according to the custom of business men in all communities, and what do you wish to conceal?

18th. Where is the head office and principal place of business of defendant, the Kern Trading and Oil Company; is it in the Flood Building, San Francisco, California?

19th. Is it not a fact that the Kern Trading and Oil Company was organized for the purpose of hold-

ing and muniplulating all the mineral lands of the Southern Pacific Railroad Company of California in California?

20th. Why and for what purpose was it organized? Please state fully without evasion, reservation or equivocation or deceit.

21st. Have you any objection to giving the solicitor or counsel for complainants permission to examine the books of the Kern Trading and Oil Company?

22nd. If you have, why?

23rd. What do you wish to conceal?

24th. How much money does the Kern Trading and Oil Company turn over monthly or at any other time to defendant the Southern Pacific Railroad Company?

25th. How much semi-annually?

26th. How much annually?

27th. When does settlements take place between the Kern Trading and Oil Company, and the Southern Pacific Railroad Company?

28th. Will you furnish a copy of this last statement or settlement between the Kern Trading and Oil Company and the [92] Southern Pacific Railroad Company, including copy of statement of all transactions up to that time?

29th. Will you furnish a true copy of all trust deeds given by defendant, the Southern Pacific Railroad Company, and which you claim to be a lien upon the land grant set forth and described in this suit?

30th. Will you give a full, fair and truthful statement of the amount of all bonds outstanding, secured

by said trust deeds?

31st. Who are the present officers and directors of the Southern Pacific Railroad Company of New Mexico?

32nd. Who are the present officers and directors of the Southern Pacific Railroad Company of Arizona?

33rd. Do you know who were the directors and officers of the Southern Pacific Railroad Company during the years, 1892, 1893 and 1894, and will you answer and do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? Will you set forth the same, fully and at large in your answer?

The defendant, the Southern Pacific Company and the Southern Pacific Railroad Company, consolidated, by their officers, are required to answer interrogatory, No. i, 2, 3, 4, 5, 27, 28, 29, 30, 31, 32, 33.

The defendant, the Kern Trading and Oil Company, by its officers, Edwin T. Dumble, George L. King, C. H. Redington, J. E. Foulds, W. A. Worthington, and W. R. Scott, are required to answer interrogatories No. 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28. The defendants, the Southern Pacific Railroad Company, consolidated, as is in this bill more specifically set forth, and the Kern Trading and Oil Company. The defendants W. F. Herrin and E. E. Calvin are required to answer. [93] interrogatories No. 1, 2, 3, 4, 5,

11, 12 and 23, and that all the defendants be required to answer the premises.

1st. WHEREFORE: YOUR ORATORS PRAY:

That a construction and interpretation be had and made by this court of sections 3 and 18 of said Act of Congress, approved July 27th, 1866, and the mandatory joint resolution of Congress, authorizing, instructing, and requiring the Secretary of the Interior of the United States to issue patent to the Southern Pacific Railroad Company of California and "expressly" prescribing what said patents should, and should not contain, approved June 28th, 1870, and the final order or decree, that patent issued, made by the Commissioner of the General Land Office and approved by the Honorable Secretary of the Interior of the United States of America on June 27th, 1894, also the clause in said decree and patent reading as follows:

"Yet excluding and excepting all mineral lands" should any such be found in the tracts aforesaid, but this exclusion and exception, according to the terms of the statute shall not be construed to include "coal and iron lands" and all of said patent.

2nd. That defendants, and each and all of them, be estopped from claiming any right, title, interest or estate in or to any of the lands involved in this suit.

3rd. That an interlocutory injunction be issued by this court against each, any and all of the defendants herein, their servants, agents, attorneys, employees and all persons in privity with them, and all persons acting under the control, authority or direction of defendants, or either of them, directly or in-

directly, requiring each, all and every one of them, to desist from any interference with the property in dispute, claimed herein, until the final determination of this suit, and that at that time, said injunction be permanent. [94]

4th. That defendants, the Southern Pacific Railroad Company, a corporation, the Equitable Trust Company of New York, Homer S. King, Central Trust Company of New York, a corporation, the Kern Trading and Oil Company, a corporation, may be required to set forth the nature of their respective claims in or to the property involved in this suit, that all adverse claims of defendants may be determined by a decree of this suit and the operating of the patent herein set forth, be restricted and controlled.

5th. That by said decree it be declared and adjudged that defendants, the Southern Pacific Railroad Company of California, a corporation, Homer S. King, Central Trust Company of New York, a corporation, Equitable Trust Company of New York, the Kern Trading and Oil Company, a corporation, has no estate or interest whatever in or to said lands and premises involved in this suit under said patent or any part or parcel thereof, and that the title of plaintiffs is good, and valid, to the property in controversy, subject, however, to the paramount title of the United States of America thereto, and that the operation of the patent herein described, be restricted and controlled.

6th. That defendants be forever enjoined and barred from asserting any claim whatever in or to

said lands and premises, or the minerals therein, adverse to the interests of your orators herein, and for such other and further relief preliminary and final, as to this Court seems most equitable and just, and judgment and decree against defendant herein, the Southern Pacific Railroad Company, a corporation, for their costs and disbursements in this suit.

7th. May it please your Honors to grant unto your orators the writ of subpoena of the United States of America, directed to the Southern Pacific Company, a corporation, the Southern Pacific Railroad Company, a corporation, and the Southern Pacific Railroad [95] Company of New Mexico, a corporation, consolidated; Homer S. King as Trustee. The Central Trust Company of New York, State of New York, a corporation; The Equitable Trust Company of New York, a corporation, the Kern Trading and Oil Company, a corporation, Julius Kruttschnitt, J. H. Wallace, J. L. Willcutt, W. A. Worthington, E. E. Calvin, Edwin T. Dumble, George L. King, C. H. Redington, W. R. Scott, J. E. Foulds, J. A. Jones, William Herrin, I. W. Hellman, James Wilson, F. K. Ainsworth, William Hood, A. K. Van Deventer, Joseph Hellen, William Mahl, commanding them on a certain day and under a certain penalty, to be and appear in this court, then and there to answer the premises, and to stand to, and abide by, such order and decree as may be made against them, and your complainants will ever pray.

T. S. MINOT,
Solicitor for Complainants.

HOKÉ SMITH,
Counsel for Complainants.

State of California,
County of San Francisco,
Northern District of California,
United States of America,—ss.

I, T. S. Minot, being first duly sworn, on my own behalf and on behalf of all the other complainants in the within suit, depose and say: That I am one of the complainants herein, that I have read the foregoing bill of complaint and know the contents thereof, and that the same is true to my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

T. S. MINOT.

Subscribed and sworn to before me this 29th day of March, 1910.

[Seal] L. H. CONDON,
Notary Public in and for the City and County of
San Francisco, State of California. [96]

Due service and receipt of a copy of the amended and supplemental bill of complaint in the within entitled suit is hereby admitted in the City and County of San Francisco, State of California, Northern District of California, United States of America, this 29th day of March, 1910.

GUY V. SHOUP and
D. V. COWDEN,
WM. SINGER, Jr.,

Solicitor for Defendants, Southern Pacific Company, Southern Pacific Railroad Company, Homer S. King, as Trustee, The Equitable Trust Company of New York, The Kern Trading and Oil Company.

[Endorsed]: No. 177. In Equity. United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division. George D. Roberts et al., Complainants, vs. The Southern Pacific Company, a Corporation, et al., Defendants. Amended and Supplemental Bill of Complaint. Filed Mar. 31, 1910. Win. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. [97]

[Demurrer of Southern Pacific Company et al.]

Case No. 177.

United States Circuit Court, Ninth Circuit, Northern Division of the Southern District of California.

IN EQUITY.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY et al.,

Defendants.

The Joint and Several Demurrer of the defendants Southern Pacific Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Equitable Trust Company of New York, and Homer S. King as Trustee, to the Amended and Supplemental Bill of Complaint herein.

These defendants, Southern Pacific Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Equitable Trust Company of New York, and Homer S. King as Trustee, jointly

and severally, by protestation, not confessing or acknowledging all or any of the matters or things in the said Amended and Supplemental Bill of Complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and to the whole thereof, and for cause of demurrer show:

1st. That the said Amended and Supplemental Bill of Complaint does not state a cause of action, or cause of suit, against these defendants, or any of them, within the jurisdiction of this Court.

2nd. That the said Amended and Supplemental Bill of Complaint does not set forth or show any matter, equity, or cause, entitling complainants, or any of them, to file or maintain the same against these defendants, or any of them.

3rd. That the said Amended and Supplemental Bill of Complaint [98] does not set forth or show any matter, equity, or cause, entitling complainants, or any of them, to the discovery thereby sought, required, or prayed, or to any discovery whatsoever, of or from these defendants, or any of them.

4th. That the said Amended and Supplemental Bill of Complaint does not set forth or show any matter, equity, or cause, entitling complainants, or any of them, to the relief thereby sought or prayed, or to any relief whatsoever, of or from these defendants, or any of them.

5th. That it appears by the allegations of the said Amended and Supplemental Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown thereby, is barred by the first

section of the Act of Congress, approved March 2d, 1896, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," printed and published in Volume 29, on page 42 and following, United States Statutes at Large.

6th. That it appears by the allegations of the said Amended and Supplemental Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown by the said Amended and Supplemental Bill of Complaint is barred by:

(a). The provisions of section 318 of the Code of Civil Procedure of the State of California.

(b). The provisions of section 319 of the Code of Civil Procedure of the State of California.

(c). The provisions of section 320 of the Code of Civil Procedure of the State of California.

(d). The provisions of section 321 of the Code of Civil Procedure of the State of California.

(e). The provisions of section 338 of the Code of Civil Procedure of the State of California. [99]

(f). The provisions of section 343 of the Code of Civil Procedure of the State of California.

7th. That it appears by the allegations of the said Amended and Supplemental Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown by the said Amended and Supplemental Bill of Complaint, is barred by the long delay and laches of the complainants, and of each of them.

Wherefore, these defendants, jointly and severally, pray the judgment of this Honorable Court

whether they, or any of them, shall make any further or other answer to the said Amended and Supplemental Bill of Complaint, or to any part thereof, or to any matters or things therein set forth; and further pray to be hence dismissed, with their costs in this behalf sustained.

GUY V. SHOUP and
D. V. COWDEN,

Attorneys for the said Defendants.

WM. SINGER, Jr.,

Counsel for the said Defendants.

State of California,

City and County of San Francisco,—ss.

G. L. King makes solemn oath and says: That he is the Secretary of the Southern Pacific Railroad Company, named as one of the defendants in and to the foregoing Joint and Several Demurrer; and that the said Demurrer is not interposed for delay.

G. L. KING.

Subscribed and sworn to before me on April 1st, 1910.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that, in my opinion, the foregoing Joint and Several Demurrer is well taken in point of law.

WM. SINGER, Jr.,
Counsel for said Defendants. [100]

State of California,
City and County of San Francisco,—ss.

Fred Brauns, being duly sworn, deposes and says: That he is paper-server for and in the office of Wm. Singer, Jr., Room 842 Flood Building, San Francisco, California; that he is over twenty-one years of age; that on April 4th, 1910, he served on T. S. Minot, solicitor for complainants, the foregoing Joint and Several Demurrer of defendants Southern Pacific Company et al., to Complainants' Amended and Supplemental Bill, by delivering a full, true and correct copy thereof to the Clerk and Stenographer in charge of the offices of said T. S. Minot, Rooms 1001 to 1004, Phelan Building, San Francisco, California, and taking her receipt therefor endorsed thereon.

FRED BRAUNS.

Subscribed and sworn to before me on April 4th, 1910.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt, by copy, of the within Demurrer is
hereby admitted on April 4th, 1910.

T. S. MINOT,
Attorney for the Complainants.

[Endorsed]: No. 177. U. S. Circuit Court, Southern District of California, Northern Division. George D. Roberts et al. vs. Southern Pacific Company et al. Joint and Several Demurrer of Def'ts Southern Pac. Co. et al. to Complainants' Amended

and Supplemental Bill. Filed Apr. 6, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Guy V. Shoup and D. V. Cowden, *Attorney for Defendants.* Room 842, Flood Building, San Francisco. [101]

[Demurrer of Central Trust Company of New York.]

Case No. 177.

United States Circuit Court, Ninth Circuit, Northern Division of the Southern District of California.

IN EQUITY.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY et al.,

Defendants.

The demurrer of defendant Central Trust Company of New York to the complainants' amended and supplemental bill of complaint herein.

The defendant Central Trust Company of New York, by protestation, not confessing or acknowledging all or any of the matters or things in the said amended and supplemental bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demurs thereto and to the whole thereof, and for cause of demurrer shows:

1st: That the said amended and supplemental bill of complaint does not state a cause of action, or cause of suit, against this defendant, within the

jurisdiction of this Court.

2nd: That the said amended and supplemental bill of complaint does not set forth or show any matter, equity or cause entitling complainants, or any of them, to file or maintain the same against this defendant.

3d: That the said amended and supplemental bill of complaint does not set forth or show any matter, equity or cause entitling the complainants, or any of them, to the discovery thereby sought, required or prayed, or to any discovery whatsoever, of or from this defendant.

4th: That the said amended and supplemental bill of complaint does not set forth or show any matter, equity or [102] cause entitling complainants, or any of them, to the relief thereby sought or prayed, or to any relief whatsoever, of or from this defendant.

5th: That it appears by the allegations of the said amended and supplemental bill of complaint that any cause of action, or cause of suit, shown or sought to be shown thereby, is barred by the first section of the Act of Congress, approved March 2, 1896, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," printed and published in Volume 29, on pages 42 and following, United States Statutes at Large.

6th: That it appears by the allegations of the said amended and supplemental bill of complaint that any cause of action, or cause of suit, shown or sought to be shown by the said amended and supplemental

bill of complaint is barred by:

- (a) The provisions of section 318 of the Code of Civil Procedure of the State of California;
- (b) The provisions of section 319 of the Code of Civil Procedure of the State of California;
- (c) The provisions of section 320 of the Code of Civil Procedure of the State of California;
- (d) The provisions of section 321 of the Code of Civil Procedure of the State of California;
- (e) The provisions of section 338 of the Code of Civil Procedure of the State of California;
- (f) The provisions of section 343 of the Code of Civil Procedure of the State of California.

7th. That it appears by the allegations of the said amended and supplemental bill of complaint that any cause of action, or cause of suit, shown or sought to be shown by the said amended and supplemental bill of complaint is barred by the long delay and laches of the complainants, and of each of them. [103]

WHEREFORE, this defendant prays the judgment of this Honorable Court whether it shall make any further or other answer to the said amended and supplemental bill of complaint, or to any part thereof, or to any matters or things therein set forth; and further prays to be hence dismissed, with its costs in this behalf sustained.

HORACE T. PLATT,
RICH'RD BAYNE,

Attorneys for Defendant, Central Trust Company,
of New York.

JOLINE, LARKINS & PETTIBONE,
Of Counsel.

State of New York,
City and County of New York,—ss.

E. Francis Hyde makes solemn oath and says: That he is an officer of the Central Trust Company of New York, named as one of the defendants in and to the foregoing demurrer, to wit, vice-president; that the said demurrer is not interposed for delay.

E. FRANCIS HYDE.

Subscribed and sworn to before me this 11th day of April, 1910.

[Seal] A. S. CAMPBELL,
Notary Public in and for the City and County of
New York, State of New York.

We hereby certify that, in our opinion, the foregoing demurrer is well taken in point of law.

RICH'D BAYNE,
H. T. PLATT,

Counsel for Defendant Central Trust Company of
New York. [104]

State of New York,
County of New York,—ss.

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That

A. S. Campbell,

before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said county, duly appointed

and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 11 day of Apr., 1910.

[Seal]

WM. F. SCHNEIDER,

Clerk. [105]

[Endorsed]: In Equity. Case No. 177. United States Circuit Court, Ninth Circuit, Northern Division of Southern District of California. George D. Roberts et al., Complainants, vs. Southern Pacific Company et al., Defendants. Demurrer of Defendant Central Trust Company of New York. Service accepted T. S. Minot. Filed Apr. 19, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Platt & Bayne, Attorneys and Counselors at Law, 11th Floor, Crocker Building, San Francisco, Cal.
[106]

[Order Sustaining Demurrers, etc.]

At a stated term, to wit, the January Term, A. D. 1911, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Monday, the thirteenth day of March, in the year of our Lord one thou-

sand nine hundred and eleven. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 177—N. D.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY et al.,

Defendants.

This cause having heretofore been submitted to the Court for its consideration and decision upon the joint and several demurrer of the defendants, Southern Pacific Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Equitable Trust Company of New York, and Homer S. King, Trustee, to complainants' amended and supplemental bill of complaint, and on the demurrer of defendant Central Trust Company of New York to complainants' amended and supplemental bill of complaint, and the Court having duly considered the same and being fully advised in the premises, it is now, on this 13th day of March, A. D. 1911, being a day in the January Term, A. D. 1911, by the Court ordered that the demurrs of said defendants be, and they hereby are, sustained, and that the bill of complaint be dismissed at the complainants' cost. [107]

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Northern Division.

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Defendants.

Decree.

This cause having come on regularly for hearing on the joint and several demurrer of the defendants, Southern Pacific Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Equitable Trust Company of New York and Homer S. King, as trustees, to complainants' amended and supplemental bill of complaint and on the demurrer of defendant Central Trust Company of New York to complainants' amended and supplemental bill of complaint, and the Court, after hearing arguments of counsel, and after due deliberation thereon, thereafter, on the 13th day of March, 1911, having, by its order made and entered herein, sustained said demurrers, and having further ordered that the bill of complaint be dismissed at complainants' cost;

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed, that complainants' said bill of

complaint be, and the same hereby is, dismissed, and that said defendants recover from complainants, their, the said defendants costs herein, taxed at \$10.00/100 in favor of defendant Central Trust Company of New York and at \$11.60/100 in favor of the other defendants above named.

Los Angeles, March 21st, 1911.

ROSS,
Circuit Judge.

Decree entered and recorded March 21st, 1911.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk. [108]

[Endorsed]: No. 177. U. S. Circuit Court, Ninth Circuit, Southern District of California, Northern Division. George D. Roberts et al., Complainants, vs. Southern Pacific Company, a Corporation, et al., Defendants. Decree. Filed Mar. 12, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [109]

[Opinion of the Court.]

*In the United States Circuit Court in and for the
Southern District of California, Northern Di-
vision.*

GEORGE D. ROBERTS et al.,

Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY et als.,
Defendants.

Stripped of the mass of irrelevant and redundant matter contained in the pleadings, the case presented is this: Can a citizen of the United States, or one having declared his intention to become such, lawfully enter upon and claim as mineral ground land theretofore patented by the Government to a railroad company under a congressional grant, such patents, after describing the land thereby conveyed, containing the clause, "Yet excluding and excepting 'all mineral lands,' should any such be found in the tracts aforesaid. But this exclusion and exception, according to the terms of the statute, shall not be construed to include 'Coal and iron land.' "

The complainants' alleged rights to the lands in question in this suit were, according to their express allegation, not acquired until 15 years after the issuance of patents to the Southern Pacific Railroad Company therefor, at which time they claim to have made mineral locations upon them, and by this suit, the nature of which is variously characterized by their counsel, they ask the court to protect their alleged rights as such mineral locators, by some sort of injunctive process, by "controlling" the patents which were issued by the Government, and which they expressly allege conveyed the legal title to the land to the grantee therein named.

If the above-quoted clause inserted in the patents had the [110] effect of excepting from the lands described in the granting clause thereof all of such lands in which mineral might thereafter be found, the discovery of mineral in the lands in suit by the complainants, if such has been made as alleged, 15

years after the issuance of the patents, would undoubtedly defeat the grant under which the defendants hold, for the reason that the clause is without limitation as to time, and a determination by a Court or jury, as the case might be, at any subsequent date, however remote, that any of the land described in the mineral land, would thereby necessarily determine that such land was never within the terms of the railroad grant made by Congress, notwithstanding the fact that the officers of the Government, charged with the duty of inquiring into and determining the question and of issuing the Government patent for the lands granted, had issued such conveyance. A mere statement of the necessary consequences of the complainants' contention is enough to show that it cannot be sound. It would make of the patents a delusion and a snare instead of a muniment of title designed for the peace and security of those holding under them. Undoubtedly, if the lands in suit were known to be mineral lands at the time they were applied for by the railroad company under the Congressional grant to it, and if the patenting of them was, as alleged by the complainants, procured by means of the false affidavit of its land agent, or through any other fraud on its part, the Government, or anyone in privity with the Government, could justly complain and by suit, brought within the time fixed by Congress for that purpose, procure a cancellation of such patents. But this is not such a suit. Neither the Government, nor anyone in privity with the Government title, is here complaining. The suit is by strangers to that title,

for by the express averments [111] of the bill, the complainants' alleged rights were not initiated until years after the issuance of the patents which they expressly allege conveyed to the railroad company the legal title to the lands. That the complainants cannot be heard to complain of the alleged frauds upon the Government is thoroughly settled by decisions so numerous as to make their citation unnecessary. They must be familiar to all lawyers at all acquainted with the law in respect to the public lands. The only real question, therefore, in the case is whether the lands in suit are excluded from the patents by reason of the alleged subsequent discovery of mineral therein by the complainants, under the exception clause inserted in the patents, already quoted, but which I here repeat:

"Yet excluding and excepting 'all mineral lands,' should any such be found in the tracts aforesaid. But this exclusion and exception, according to the terms of the statute, shall not be construed to include 'coal and iron lands.' "

Where did the officers of the Government, charged with the duty of issuing patents for lands granted by Congress, get authority to cast upon courts or juries the duty or power of ascertaining and determining the character of the public lands applied for under the grant, which Congress devolved upon the Land Department of the Government as a prerequisite to the issuance of a patent therefor? The statutes of the United States will be searched in vain for any such authority, unless it can be deduced from the Joint Resolution of Congress of June 28,

1870 (16 Stats. 382), relating to the grant to the Southern Pacific Railroad Company made by its preceding act of July 27, 1866 (14 Stats. 292).

By the latter act Congress chartered the Atlantic and Pacific Railroad Company, empowered it to build a railroad commencing at a point at or near Springfield, Missouri, along a generally [112] described route to the Colorado River, and, after crossing that river, by the most practicable and eligible route to the Pacific Ocean—granting to such company by the third section of the Act:

“Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the general land office.”

The 18th section of the Act made a grant to the Southern Pacific Railroad Company, and is as follows:

“And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Rail-

road, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

By section 4 of the Act it was provided that whenever the Railroad Company "shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the [113] service contemplated, the President of the United States shall appoint three Commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid,

and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

As recited in the foregoing Act of Congress, the Southern Pacific Railroad Company was a corporation of the State of California, and by its charter was authorized to build a railroad "from some point on the Bay of San Francisco, in the State of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the eastern line of said State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River."

The Act of 1866, as has been seen, authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad "at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco." That company undertook to lay out a different [114] route from that designated in its articles of incorporation, and on the 3d day of January, 1867, filed with the Commissioner of the General Land Office a map showing the line of route so adopted by the company, and on the 4th of the succeeding month the then Secretary of the Interior directed the Commissioner of the General Land Office to cause to be withdrawn from sale or disposal the odd sections within the granted limits of twenty miles on each side of the road, as shown on

the map so filed January 3, 1867, and also the odd sections outside of the twenty miles and within thirty miles on each side of the said route, from which indemnity for land otherwise disposed of by the Government within the granted limits should be taken. July 14, 1868, the said order of withdrawal was revoked and the lands included therein were opened to sale. On the 20th of August following the latter order was suspended, so far as it related to lands south of San Jose, California, and November 2 and 11, 1869, the then Secretary of the Interior revoked the suspension of August 20, 1868, and directed the restoration to sale, after sixty days notice, of the lands included in the suspension order. On the 15th of the next month the orders of November 2 and 11, made the preceding month, were suspended. (Opinions of Attorney General, Vol. 16, pp. 80-89.) July 25, 1868, the time for the construction of the road by the Southern Pacific Railroad Company was extended by Congress (15 Stats. 187), and on June 28, 1870, Congress passed the Joint Resolution in question, which is here set out in full:

“Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said [115] road, in the manner and within the time provided by law,

and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the *repo* of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

In their brief counsel for the complainants ask the Court to "account for, explain, construe, interpret and apply" the foregoing saving clause. The reason for and purpose of it is quite fully set forth in the debate in the Senate upon the resolution, where it was first introduced. (Congressional Record, part V, 2d Session, 41 Congress 1869-1870, pp. 3950, 3951, 3952, 3953.)

While asking the Court to account for and explain the clause counsel at the same time assert that the Court is not at liberty to refer to the debate in the Senate upon the subject. It is quite true that the meaning of the clause is to be determined from the

language used by Congress, but counsel are mistaken in supposing and asserting it to be improper for the Court to refer to the debate. In *Binns vs. United States*, 194 U. S. 486, 495, the Supreme Court said:

"While it is generally true that debates in Congress are [116] not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body, *United States vs. Freight Association*, 166 U. S. 290, 318, yet it is also true that we have examined the reports of the committees of either body with a view of determining the scope of statutes passed on the strength of such reports. *Holy Trinity Church vs. United States*, 143 U. S. 457, 464. When sections 461 and 462 were under consideration in the Senate the chairman of the Committee on Territories, in response to inquiries from Senators, made these replies:

'The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the Government of the Territory of Alaska. * * * They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which, in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on Territories, after consultation with prominent citizens of the Territory of

Alaska, including the Governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them.' Vol. 32, Congressional Record, Part III, page 2235."

In Jennison vs. Kirk, 98 U. S. 453, 459, the same court, in construing an act of Congress and in referring to and setting forth certain statements of one of the Senators made in the Senate, said:

"These statements of the author of the act in advocating its [117] adoption cannot, of course, control its construction, where there is doubt as to its meaning; but they show the condition of mining property on the public lands of the United States, and the tenure by which it was held by miners in the absence of legislation on the subject, and thus serve to indicate the probable intention of Congress in the passage of the Act."

In the case of People vs. Stephens, 62 Cal. 209, 235, 236, the Supreme Court of California, in construing one of the provisions of the constitution of the State, referred to the purpose of the provision as explained in the debates in the constitutional convention by the member at whose instance it was inserted and became a part of the constitution. See, also, Wadsworth vs. Boisen, 148 Fed. 771, 778; Ho Ah Kow vs. Nunan, Fed. Case No. 6546.

Turning to the debate in the Senate upon the saving clause added to the joint resolution of June 28, 1870, it is readily seen that its purpose was to protect those settlers who had located upon public lands

along the line of the proposed changed route of the Southern Pacific Railroad Company, as indicated by the map filed by that company in the General Land Office on the 3d of January, 1867. By the Joint Resolution Congress sanctioned the change of route and made to the Southern Pacific Railroad Company a precisely similar grant of land on each side of that line that it had made to the same company by the 18th section of the act of July 27, 1866, on each side of the line of road therein authorized; but to protect not only those who had acquired or might acquire prior to the attaching of the grant a legal right to lands along the line of the changed route, but also all *actual* settlers thereon, Congress provided in and by the Joint Resolution that the change of route thereby authorized and the grant of lands thereby made should not affect the rights of any actual settler, and further that the grant of lands thereby made to the Southern Pacific Railroad Company along the new route was [118] and should be subject to the same conditions and restrictions as applied to the original grant made to that company in and by the act of July 27, 1866—the language of the Joint Resolution being, as has been seen: “Expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.”

Those conditions and restrictions are specifically stated in the Act of 1866 and are, in substance, that the grant should not apply to any mineral land nor to any land reserved, sold, granted or otherwise

appropriated, nor to any land to which the United States did not have full title and which was not free from pre-emption or other claims or right at the time the line of the road should be designated by a plat thereof filed in the office of the Commissioner of the General Land Office. Such are the express provisions of the grant of July 27, 1866, expressly referred to in the Joint Resolution for the conditions and restrictions of the grant of the lands thereby made along the line of road thereby authorized to be built. There is absolutely nothing in the saving clause of the Joint Resolution, in my opinion, either requiring or authorizing the patents thereby directed to be issued for the granted lands to contain those conditions or restrictions, or any of them. If such patents were thereby required or authorized to contain one of the conditions or restrictions, then manifestly they were required to contain all of them, for no distinction is made between them by Congress and none can be found in the language of its acts in question. Clearly, therefore, if the contention of the complainants' counsel is correct, that by the Joint Resolution of June 28, 1870, Congress required that the patents to be issued to the railroad company for lands within the grant made to it should contain an exception of all mineral lands, they were likewise required to contain a similar exception of all lands reserved, sold, granted or otherwise appropriated, [119] and all land to which the United States did not have full title and which was not free from pre-emption or other claims or rights at the time the line of the grantee's road was designated by a plat

thereof filed in the office of the Commissioner of the General Land Office. There is no escape from this conclusion for I repeat that the statute makes no distinction between the conditions and restrictions of the grant, save only the rights of actual settlers therein expressly specified, and no distinction in the other conditions and restrictions of this grant has been or can be suggested by counsel for the simple reason that the statute contains none. The result is that, according to the contention of counsel for the complainants, we would have Congress providing for the issuance of Government patents for lands under its grant which upon their face would leave open for all time, to be decided by courts or juries, as the case might be, not only the question as to the character of the land patented but also as to whether it had been reserved, sold, granted or otherwise appropriated, and as to whether the United States had full title, and whether it was free from pre-emption or other claims or rights at the time the railroad company designated the line of its road by filing a plat thereof in the office of the Commissioner of the General Land Office. As a matter of course, Congress never intended anything of the sort, and there is nothing in the acts in question nor in any other grant to any railroad company that has ever come under my observation, or in any decision of the Supreme Court, that gives any support to any such conclusion.

The patent was the last step in the proceedings provided for by Congress and was designed, as the statute expressly declares, to convey the Government title to the grantee. Of what avail would such

an instrument, intended for the peace and security of the holder, be if the antecedent facts upon which it is required to be based are open to subsequent inquiry and contestation by [120] strangers to the title? As well might it be contended that questions of fact in respect to the marking of the boundaries of a patented mining claim or the previous discovery of mineral therein, or any other fact made essential by the statute to the issuance of a mining patent, are open to inquiry by the court subsequent to its issue. In respect to such a contention this Court said in the case of Doe vs. Waterloo Mining Co., 54 Fed. 935, 940:

“If the rights conferred by the patent can be defeated by showing a want of parallelism of the end lines in the original location, it is difficult to understand why the patent may not likewise be defeated by showing that the original location was void because its boundaries were not properly marked upon the ground, or because no vein, lode, or ledge was discovered within them, or because the statutory requirement in respect to the posting of the notice of location was not complied with, or because of an omission on the part of the locator to comply with any other provision of the statute regarding the location of such lode claims. All such matters I understand to be absolutely concluded by the patent so long as it stands unrevoked. If questions relating to the boundaries of the location, the marking of them, the discovery of a vein, lode, or ledge within them, the posting of the required notice, etc., are open to contestation after the issuance of a patent for the

claim as before, the issuance of such an instrument would be a vain act, and would wholly fail to secure to the patentee the rights and privileges designed by the law authorizing its issue. The very purpose of the patent is to do away with the necessity of going back to the facts upon which it is based."

Great reliance is placed by counsel for the complainants on this clause from the opinion of the Supreme Court in the case of Barden vs. Northern Pacific Railroad Co., 154 U. S. 288; [121]

"The delay of the Government in issuing a patent to the plaintiff, of which great complaint is made, does not affect the power of the company to assert, in the meantime, by possessory action (as held in Deseret Salt Company vs. Tarpey, 142 U. S. 241), its right to lands which are in fact nonmineral. But such delay, as well observed, cannot have the effect of entitling it to recover, as is contended in this case, lands which it admits to be mineral. The Government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the patent, which would be taken as its determination, that no mineral lands exist therein."

The observation that "the Government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the pat-

ent" is very far from saying, much less deciding, that a patent issued for lands in pursuance of such a grant must or may except from the lands described in the granting clause thereof all mineral lands. The Court could not have so decided in that case, for there was no such question before the Court, and could not have been, as no patent had been issued in the case there under consideration. It was an action by the Northern Pacific Railroad Company to recover certain lands, confessedly mineral in character, as a part of its land grant, which grant, like the one here in question, excluded all mineral lands therefrom, on the ground that when that grant became attached to the various sections within it by the definite location of the company's line of road, the land in suit was not known to be mineral land; and [122] the question in the case, as will be readily seen from the prevailing as well as the dissenting opinions, was whether the fact entitled the railroad company to the land sued for as part of its grant, or whether such land was excluded from the grant by the discovery of its mineral character at any time prior to the issuance of the Government patent therefor. The majority of the Court held that the character of the land was open to inquiry at any time prior to the issuance of the patent, and that the discovery of its mineral character at any time before it was patented necessarily excluded it from the grant, because the grant was of nonmineral land only. But the Court in the prevailing opinion distinctly pointed out that the duty of ascertaining and determining the character of the land rested upon the officers of the Land

Department, and there is, I think, nothing in it even tending to show that that or any other matter of fact could be left by them to the ascertainment and determination of a court or jury subsequent to the issuance of the Government patent. The Court said:

"The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of public lands of the United States, and the adjustment of private claims to them under the legislation of Congress. It can hear contestants and decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right; and when the controversy before it is fully considered and ended, it can issue to the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called for are swamp lands, timber lands, agricultural lands or mineral [123] lands, and so designate them in the patent which it issues. The Act of Congress making the grant to the plaintiff provides for the issue of a patent to the grantee for the land claimed, and as the grant excludes mineral lands in the direction for such patent to issue, the land office can examine into the character of the lands, and designate it in its conveyance.

"It is the established doctrine, expressed in numerous decisions of this Court, that wherever Con-

gress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the Land Department to issue a patent for such land upon ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition, or mistake, its determination is conclusive against collateral attack.

"In *Smelting Co. vs. Kemp*, 104 U. S. 636, 640, 641, this court thus spoke of the Land Department in the transfer of public lands: 'The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of that title the law has made numerous provisions, designating the persons who may acquire it and the terms of its acquisition. That the provisions may be properly carried out the Land Department, as part of the administrative and executive branch of the Government, has been created to supervise all the various proceedings taken to obtain title from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration and to pass upon its competency, credibility, and weight. In that respect they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive, [124] when brought to notice in a collateral proceeding. Their judgment in such cases is like that of other special

tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment. The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned, and sealed, not merely operates to pass the title, but is in the nature of an official declaration by that branch of the Government to which the alienation of the public lands, under the law, is entrusted, that all the requirements preliminary to its issue have been complied with. The presumptions thus attending it are not open to rebuttal in an action of law.'

"In *Steele vs. Smelting Co.*, 106 U. S. 447, 450, the language of the Court was that: 'The Land Department, as we have repeatedly said, was established to supervise various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualification of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation.'

"In *Heath vs. Wallace*, 138 U. S. 573, 585, it was held that 'the question whether or not lands returned

as "subject to periodical overflow" are "swamp and overflowed lands" is a question of fact properly determinable by the Land Department.' And Mr. Justice Lamar added: 'It is settled by an unbroken line of decisions of this court in land jurisprudence that the decisions of [125] that department upon matters of fact within its jurisdiction are, in the absence of fraud or imposition, conclusive and binding on the courts of the country.' If the Land Department must decide what lands shall not be patented because reserved, sold, granted, or otherwise appropriated, or because not free from pre-emption or other claims or rights at the time the line of the road is definitely fixed, it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested by counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver, discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in *Knight vs. Land Association*, 142 U. S. 161, 178, as the 'supervising agent of the Government to do justice to all claims and preserve the rights of the people of the United States,' by certifying the list until corrected

in accordance with the discoveries made known to the department. He would not otherwise discharge the trust reposed in him in the administration of the law respecting the public domain.

"There are undoubtedly many cases arising before the Land Department in the disposition of the public lands where it will be a matter of much difficulty on the part of its officers to ascertain with accuracy whether the lands to be disposed of are to be deemed mineral lands or agricultural lands, and in such cases the rule adopted that they will be considered mineral or agricultural as they are more valuable in the one class or the other, may be sound. The officers will be governed by the knowledge [126] of the lands obtained at the time as to their real character. The determination of the fact by those officers that they are one or the other will be considered as conclusive.

"In the case of the Central Pacific Railroad Company vs. Valentine, 11 Land Dec. 238, 246, the late Secretary of the Interior, Mr. Noble, speaks of the practice of the Land Department in issuing patents to railroad lands. His language is: 'The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which vested by the act, necessarily implies that there exists jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant and capable of passing thereunder. Now, this jurisdiction is in the Land Department, and it continues, as we have seen, until the lands have been either patented or certified to or for the use of the railroad company. By reason of this jurisdiction

it has been the practice of that department for many years past to refuse to issue patents to railroad companies for lands found to be mineral in character at any time before the date of patent. Moreover, I am informed by the officers in charge of the mineral division of the Land Department that ever since the year 1867 (the date when that division was organized) it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent or certification where patent is not required. This practice having been uniformly followed and generally accepted for so long a time there should be, in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling before a departure from it should be sanctioned. It has, in effect, become a rule of property.'

"It is true that the patent has been issued in many instances without the investigation and consideration which the public [127] interest requires; but if that has been done without fraud, though unadvisedly by officers of the Government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the Government until by further legislation a stricter regard to their duties in that respect can be enforced upon them. The fact remains that under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the Government to the grantees, reposes in officers of the Land Depart-

ment. Until such patent is issued, defining the character of the land granted and showing that it is nonmineral, it will not comply with the act of Congress in which the grant before us was made to plaintiff. The grant, even when all the acts required of the grantees are performed, only passes a title to nonmineral lands; but a patent issued in proper form, upon a judgment rendered after a due examination of the subject by officers of the Land Department, charged with its preparation and issue, that the lands were nonmineral, would, unless set aside and annulled by direct proceedings, estop the Government from contending to the contrary, and as we have already said in the absence of fraud in the officers of the department, would be conclusive in subsequent proceedings respecting the title."

I do not find in this language of the prevailing opinion in the Barden case any support for the contention of the complainant's counsel that the officers of the Land Department were required or authorized to insert in the patents here in question, or in any other similar patent, after describing the lands falling within the railroad grant, a clause "excluding and excepting all mineral lands, should any such be found in the tracts aforesaid." And that the Supreme Court itself takes the same view of the decision in the Barden case is, I think, shown by its reference thereto in the case of Shaw vs. Kellogg, 170 U. S. 313, [128] where, at page 339, it says:

"Defendant relies largely on the decision of this court in Barden vs. Northern Pacific Railroad, 154 U. S. 288, in which it was held that lands identified

by the filing of the map of definite location as within the scope of the grant made by Congress to that company, although at the time of the filing of such map not known to contain any mineral, did not pass under the grant if before the issue of the patent mineral was discovered. But that case, properly considered, sustains rather the contentions of the plaintiff. It is true there was a division of opinion, but that division was only as to the time at which and the means by which the nonmineral character of the land was settled. The minority were of the opinion that the question was settled at the time of the filing of the map of definite location. The majority, relying on the language in the original act of 1864 making the grant, and also on the joint resolution of January 30, 1865, which expressly declared that such grant should not be ‘construed as to embrace mineral lands, which in all cases shall be and are reserved exclusively to the United States,’ held that the question of mineral or nonmineral was open to consideration up to the time of issuing a patent. But there was no division of opinion as to the question that when the legal title did pass—and it passed unquestionably by the patent—it passed free from the contingency of future discovery of minerals.”

I am also of the opinion that the case last referred to—Shaw vs. Kellogg—is direct authority for the proposition that the officers of the Land Department had no authority to insert in the patents under consideration the clause excepting from the lands described in its granting clause “all mineral lands should any such be found in the tracts aforesaid.”

The grant involved in Shaw vs. Kellogg was made by section 6 of an act of Congress passed June 21, 1860 (12 Stats. 71), in settlement of a claim [129] under a Mexican grant to land in the vicinity of Los Vegas by which the claimants were given an equal amount of nonmineral and vacant land to be by them elsewhere selected in the territory of New Mexico, to be located in a certain form and within a certain time. It was by the act made the duty of the surveyor general of New Mexico to make survey and location of the land so selected. The grantees made their selection and applied for the land. Certain correspondence occurred between the Land Department and the surveyor general in respect to the form of the application and in respect to the evidence relating to the character of the land, that is to say, whether or not it was mineral land, which resulted in the Land Department instructing the surveyor general to approve the selection and make a survey thereof. The Land Department subsequently approved the survey, field-notes and plat of the surveyor general, but in doing so added the words, "Subject to the conditions and provisions of Section 6 of the Act of Congress approved June 21, 1860," which, as has been seen, excluded mineral land from the grant. The Act of Congress did not provide for the issuance of a patent, but the Land Department noted on its maps that this tract had been segregated from the public domain and had become private property and so reported to Congress, which never questioned the validity of such action. The grantees were also notified and took possession of the land.

Many years afterward a portion of it was claimed as mineral land by a party whose contentions were thus stated by the Supreme Court in its opinion:

“These contentions are that Congress granted only nonmineral lands; that this particular tract is mineral land, and therefore by the terms of the act is not within the grant; that no patent has ever been issued, and therefore the legal title has never passed from the Government; that the Land Department never adjudicated that this was nonmineral land, but on the contrary [130] simply approved the location, subject to the conditions and provisions of the act of Congress, thereby leaving the question of title to rest in perpetual abeyance upon possible future discoveries of mineral within the tract.”

In considering the limitation undertaken to be imposed by the Land Department upon its approval of the selection of the land by the grantees and the surveyor general’s survey, field-notes and plat thereof, the Supreme Court said:

“What is the significance of, and what effect can be given to the clause inserted in the certificate of approval of the plat that it was subject to the conditions and provisions of the act of Congress? We are of the opinion that the insertion of any such stipulation and limitation was beyond the power of the Land Department. Its duty was to decide and not to decline to decide; to execute and not to refuse to execute the will of Congress. It could not deal with the land as an owner and prescribe the conditions upon which title might be transferred. It was agent and not principal. Congress had made a grant,

authorized a selection within three years, and directed the surveyor general to make survey and location, and within the general powers of the Land Department it was its duty to see that such grant was carried into effect and that a full title to the proper land was made. Undoubtedly it could refuse to approve a location on the ground that the land was mineral. It was its duty to decide the question—a duty which it could not avoid or evade. It could not say to the locator that it approved the location provided no mineral should ever thereafter be discovered, and disapproved it if mineral were discovered; in other words, that the locator must take the chances of future discovery of minerals. It was a question for its action and its action at the time. The general statutes of Congress in respect to homestead, pre-emption and townsite locations provide that they shall be made upon lands that are nonmineral, [131] and in approving any such entry and issuing a patent therefor, could it be tolerated for a moment that the Land Department might limit the grant and qualify the title by a stipulation that if thereafter mineral should be discovered the title should fail? It cannot in that way avoid the responsibility of deciding and giving to the party seeking to make the entry a full title to the land or else denying it altogether. As said in *Deffeback vs. Hawks*, *supra*, 406:

“ ‘The position that the patent to the plaintiff should have contained a reservation excluding from its operation all building and improvements not belonging to him, and all rights necessary or proper

to the possession and enjoyment of the same, has no support in any legislation of Congress. The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribed.' "

It results from what has been said that the demurrs must be, and are, sustained and the bills dismissed at the complainants' costs.

ROSS,
Circuit Judge.

[Endorsed]: No. 177. In the United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division. George D. Roberts et al. vs. Southern Pacific Company et al. Opinion of the Court. Filed Mar. 13, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [132]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Defendants.

**Order [Entering Francis J. Heney, B. D. Townsend
and A. H. Blatchley on the Records as Solicitors
for Complainants].**

Upon the verified petition of James B. Sweeney, one of the complainants in the above-entitled suit, and upon the affidavits of Francis J. Heney and A. H. Blatchley, and upon the process, subpoena, bill of complaint, findings, order, judgment and all other papers heretofore served and now on file in the office of the Clerk of said Court in the above-entitled suit, and upon motion of Francis J. Heney and A. H. Blatchley,

IT IS ORDERED That the names of B. D. Townsend, Francis J. Heney and A. H. Blatchley be spread upon the records in the above-entitled suit as solicitors for the above-named complainants, and that they be and are hereby given full power and authority to act for and do all things for and on behalf of said complainants, as such solicitors, as though originally appearing therein.

Dated, this 29th day of April, A. D. 1911.

By the Court,

WM. W. MORROW,
Circuit Judge.

[Endorsed]: 177 U. S. Circuit Court, So. Dist. of California, George D. Roberts et al. vs. Southern Pacific Co. et al. Order That Names of B. D. Townsend, Francis J. Heney and A. H. Blatchley be Spread on Record as Solicitors. Filed April 29th, 1911. Wm. M. Van Dyke, Clerk. [133]

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*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Defendants.

**Stipulation [That Hearing of Rule to Show Cause
be Heard Before the Hon. Wm. W. Morrow.]**

IT IS HEREBY STIPULATED AND MUTUALLY AGREED by and between the parties to the above-entitled suit, that the hearing of the rule to show cause, hereto annexed, may be heard before the Hon. WILLIAM W. MORROW, at his court-room at the City and County of San Francisco, State of California, on the 29th day of April, 1911, instead of in the United States Circuit Court, Southern District of California, and that any rule, order, judgment or decree made thereon, shall have the same binding force and effect as though made in said United States Circuit Court, Southern District of California.

Dated April 24, 1911.

FRANCIS J. HENEY,

A. H. BLATCHLEY,

Solicitors for Complainants.

WM. SINGER, Jr.,

D. V. COWDEN and

GUY V. SHOUP,

Solicitors for Defendants. [134]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M SCOTT (a Voluntary Unincorporated Association),

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PA-

CIFIC RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated) and HOMER S. KING, as Trustee, THE [135] CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY, (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E K. AINSWORTH, WILLIAM HOOD, A. K. VANDENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

**Petition to Make Francis J. Heney et al. Solicitors,
to Set Aside and Amend Findings, etc.].**

To the Honorable WM. W. MORROW, United States Circuit Judge, District of California:

The petition of James P. Sweeney respectfully alleges, represents and shows to this Honorable Court, that he is one of the complainants in the above-entitled suit and makes this petition for and on his own behalf, and for *an* on behalf of all of the other complainants therein.

Your petitioner further says that a Bill of Complaint in said suit was heretofore served and filed by

one, T. S. Minot, solicitor for all of said complainants, and that thereafter there was interposed, on behalf of the defendants to said suit, demurrers to said Bill of Complaint.

Your petitioner further alleges and shows to your Honor that thereafter there was a hearing and argument upon the issues thus formed by said Bill of Complaint and demurrer thereto, and such proceedings had therein, that on the 13th day of March, [136] A. D. 1911, there was made, entered and filed therein by the Honorable Erskine M. Ross, sitting and presiding in and over the United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division, an Order or Decree sustaining defendants' said demurrer to said Bill of Complaint and dismissing the Bill of said complainants with costs.

That thereafter such proceedings were had therein, that on the 21st day of March, A. D. 1911, there was made, entered and filed in said suit, a final decree and judgment, in and by the terms of which it was ordered and adjudged that complainants' said Bill of Complaint be, and the same was, thereby dismissed, with costs taxed at ten dollars in favor of defendant, Central Trust Company of New York, and at eleven dollars and sixty cents in favor of the other defendants above named.

Deponent further says, that since the commencement of said action, one, B. D. Townsend, has been retained and employed by and on behalf of said complainants, as solicitor therein, and that since the making, entry and filing of said judgment and decree of

March 21st, 1911, Francis J. Heney and A. H. Blatchley, have been retained and employed by the said complainants, as solicitors in the above-entitled suit.

Your petitioner further shows to your Honor, that there was no request or motion made by or on behalf of said complainants at the time of the announcement of the aforesaid decision and order, for leave to plead over, or to take proofs, or to go to a hearing upon the facts, and that since the employment of the said B. D. Townsend, Francis J. Heney and A. H. Blatchley, as such solicitors, he has made a full, fair and complete statement of the suit to said solicitors, and particularly to the said Francis J. Heney and A. H. Blatchley, and that he is advised by his said solicitors, that the order, judgment and decree in said suit is a final determination thereof, and would and does constitute [137] *res adjudicata*, and that he is further advised by the said Francis J. Heney and A. H. Blatchley, that if said Bill of Complaint is or was demurrable, it was due to form merely and not to the substance thereof.

Your petitioner further avers and shows to your Honor, that this application is made in good faith and not for the purpose of delay or annoyance.

WHEREFORE YOUR PETITIONER PRAYS:

FIRST: An order may be entered and made adding to and spreading upon the records in the above-entitled suit, as solicitors for complainants therein, the names of B. D. Townsend, Francis J. Heney and A. H. Blatchley, and that they be given full power and authority to act for and take all steps on behalf

of said complainants, as though originally appearing therein.

SECOND: That the findings and order of the said Honorable Erskine M. Ross, heretofore announced, made, entered, recorded and filed on the 13th day of March, 1911, together with the order, judgment and decree made, entered, recorded and filed on the 21st day of March, 1911, in said suit, be set aside, or changed, amended and modified by supplementing and adding thereto, a provision giving and granting unto said complainants, the right to plead over and serve and file an amended Bill of Complaint in said suit, without prejudice, within such time and upon such terms and conditions as may be just and equitable, or

THIRD: In the alternative, that the aforesaid findings, and the aforesaid order, judgment and decree in said suit, be changed, amended and modified, by supplementing and adding thereto, a provision by which said complainants' said Bill shall be dismissed without prejudice to their rights therein to bring and maintain a subsequent suit, the same as though the aforesaid [138] suit, had never been brought.

JAS. P. SWEENEY,

Petitioner and One of Complainants Above Named.

State of California,

City and County of San Francisco,—ss.

James P. Sweeney, one of the complainants in the above-entitled action, being first duly sworn, deposes and says:

That he is one of the complainants in the above-entitled action; that he has read the foregoing peti-

tion and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

JAS. P. SWEENEY.

Subscribed and sworn to before me this 22d day of April, 1911.

[Seal] . L. H. CONDON,
Notary Public in and for the City and County of San Francisco, State of California. [139]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Defendants.

Affidavit of Francis J. Heney and A. H. Blatchley.

State of California,

City and County of San Francisco,—ss.

Francis J. Heney and A. H. Blatchley, being each for himself first severally, duly sworn, on oath, doth each for himself, depose and say:

That he has read the petition of the complainant,

James P. Sweeney, hereto annexed, and knows the contents thereof; that neither of these deponents was retained or employed for or on behalf of the complainants in the above-entitled suit until after the 21st day of March, 1911, and that neither of them has been informed of the facts in said suit until within a few days last past.

That he knows of his own knowledge the truth of the statements contained in the said petition hereto annexed as to the proceeding therein had in court, and for greater certainty hereby refers to the process, pleadings, records and papers now on file in the office of the clerk of said court.

That he did inform the said James P. Sweeney, said petitioner, that the findings, order, judgment and decree made and entered in said suit, as in said petition set forth would and does constitute an adjudication of the matters in the said Bill [140] of Complaint contained, and would prohibit and prevent the maintaining of any subsequent suit between the same parties or those in privity with them, relative to the cause or causes of suit therein contained.

That the said James P. Sweeney has made a full, fair and complete statement of the case to him, and while the said Bill of Complaint in said suit may have been defective and demurrable as to form, deponent believes the cause of complaint therein stated on behalf of said complainants, to be a good and meritorious cause of complaint, in substance, and that said complainants should, in justice and equity, be given the right to plead over, or that the Bill of Complaint should be dismissed without prejudice to the bring-

ing and maintaining of another suit.

That in support of and as one of the reasons for the statement last aforesaid on the part of these deponents, is that a suit was heretofore commenced by one, Edmund Burke, against the Southern Pacific Railroad Company, and some of the other defendants in this suit and the cause of complaint set forth and contained in the Bill of Complaint in said suit, was, in substance, identical with that contained in the instant suit;

That to said Bill of Complaint the said defendants interposed demurrers the same as in the instant case, and the Honorable Erskine M. Ross, the Judge before whom said suit was pending, sustained the said demurrers thereto as in the instant case, whereupon said complainant Edmund Burke, appealed said decision to the United States Circuit Court of Appeals and said suit is there pending at the present time and a decision is expected sometime during the present year and that the decision of said Appellate Court therein, would, and will be controlling as to the present suit.

That this motion is made in good faith and not for the [141] purpose or delay or annoyance to the said defendants, or any of them.

FRANCIS J. HENEY.

A. H. BLATCHLEY.

Subscribed and sworn to before me this 22d day of April, 1911.

[Seal] L. H. CONDON,
Notary Public in and for the City and County of San Francisco, State of California. [142]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT T. GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),

Complainants,

vs.

'THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PA-

CIFIC RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated) and HOMER [143] S. KING, as Trustee, THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VANDEVENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

Order [to Show Cause].

Upon the process, subpoena, bill of complaint of the complainants' demurrers, findings and order heretofore, on the 13th day of March, 1911, announced, made, entered and filed in the office of the Clerk of said court, in the above-entitled suit, and the order, judgment and decree, heretofore on the 21st day of March, 1911, made, entered and filed in the office of the Clerk of said court, in said suit and upon the verified petition of James P. Sweeney, one of the complainants, and the affidavits of Francis J. Heney and A. H. Blatchley, solicitors for the said complain-

ants; and upon all the papers and documents heretofore served in said suit and now on file in the office of the Clerk of said court; and upon motion of B. D. Townsend, Francis J. Heney and A. H. Blatchley, solicitors for the complainants, in the above-entitled suit,

IT IS ORDERED, that the said defendants and each and all of them show cause, if any they may have, before the Court, presided over by the HONORABLE WM. W. MORROW at his courtroom, at San Francisco, State of California, on the 29th day of April, 1911, at [144] the opening of court on that day or as soon thereafter as counsel can be heard, why an order should not be made and entered as follows, to wit:

FIRST: Modifying, setting aside and amending the findings and order of the Honorable ERSKINE M. ROSS, heretofore on the 13th day of March, 1911, announced, made, entered, recorded and filed, and also setting aside, changing, modifying and amending the order, judgment and decree heretofore, on the 21st day of March, 1911, made, entered, filed and recorded in the office of the Clerk of said Court in the above-entitled suit, by supplementing and adding thereto, a provision giving and granting unto said complainants, the right to plead over and serve and file an amended bill of complaint in said suit, within such time and upon such terms and conditions as may seem just and equitable, or

SECOND: In the alternative, setting aside, changing, modifying and amending the aforesaid findings, order, judgment and decree in said suit by

supplementing and adding to each of them a provision by which said complainants' said bill of complaint shall be dismissed without prejudice to their rights therein to bring and maintain a subsequent suit on their said cause of complaint against said defendants or those in privity to or with them the same as though the aforesaid suit had never been brought.

That a copy of this said rule to show cause, together with a copy of the petition and affidavits, be served upon Guy V. Shoup, D. V. Cowdery and William Singer, Jr., the counsel and attorneys for said defendants on or before the 25 day of April, 1911, and the time for serving such notice is shortened accordingly, and in case that either or any of said attorneys and solicitors for said defendants, should be outside of the city of San Francisco, and his address shall be known, that notice of this [145] said rule to show cause, may be given by delivery to a telegraph office, for the transmitting of the same, duly paid for in advance thereon, a notice addressed to said attorney, stating the time and place where said hearing shall be had, and giving the title of the suit sufficiently to advise said attorney of the nature of the matter to be heard.

Dated this 24 day of April, 1911.

WM. W. MORROW,
Circuit Judge,
Judge.

[Endorsed]: No. 177. In the Circuit Court of the United States of America in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs.

The Southern Pacific Company, a Corporation, et al., Defendants. Petition, Affidavits and Order. Received April 25, 1911. By J. A. Schaertzer. Filed April 29th, 1911. Wm. M. Van Dyke, Clerk. [146]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC

RAILROAD COMPANY OF CALIFORNIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated), and [147] HOMER S. KING, as Trustee, THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY of NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN, and WILLIAM MAHL,

Defendants.

Order [Permitting Filing of Amended Bill of Complaint, etc.].

THIS MATTER COMING ON TO BE HEARD AT THIS TIME UPON MOTTON AND A RULE TO SHOW CAUSE dated on the 24th day of April, A. D. 1911, and upon the process, subpoena, amended and supplemental bill of complaint of the above-named complainants in the above-entitled suit,

demurrs of the defendants thereto, findings, opinion and order heretofore, on the 13th day of March, A. D. 1911, announced, made, entered and filed in the office of the Clerk of said Court, and the order, judgment and decree heretofore, on the 21st day of March, A. D. 1911, made, entered, filed and recorded in the office of the Clerk of said Court in said suit, and upon the written stipulations of the parties to said suit by their respective counsel, and the verified petition of James P. Sweeney, one of the said complainants, and the affidavits of Francis J. Heney and A. H. Blatchley, and upon all of [148] the papers and documents heretofore served, in said suit and now on file in the office of the Clerk of said Court, and after hearing the arguments of counsel and solicitors for said parties, A. H. Blatchley, appearing upon said motion as solicitor and counsel for said complainants, and Guy V. Shoup and D. V. Cowdery, as solicitors and counsel for said defendants, and the Court being fully advised in the premises,

NOW, upon motion of B. D. Townsend, Francis J. Heney and A. H. Blatchley, solicitors and counsel for said complainants,

IT IS ORDERED, That the complainants herein be permitted to serve and file their amended bill of complaint herewith presented, in the above-entitled suit, and that said amended bill of complaint stand in lieu of the former amended and supplemental bill heretofore filed therein, and that the demurrs here-tofore interposed on the part of said defendants stand as the demurrs to said amended bill of com-

plaint this day filed in the office of the Clerk of the said Court.

IT IS FURTHER ORDERED, That the opinion and order of the HONORABLE ERSKINE M. ROSS, heretofore made, entered, recorded and filed in the office of the Clerk of said Court, on the 13th day of March, A. D. 1911, in said suit, and the judgment and decree therein, heretofore, on the 21st day of March, A. D. 1911, made, entered, recorded and filed, without other or further amendment of either, stand as the opinion, order, judgment and decree of this court upon the issue formed by said bill of complaint amended as aforesaid and the demurrers thereto.

IT IS FURTHER ORDERED, That in case of an appeal from the aforesaid judgment and decree, by any of the parties to said suit, that the amended and supplemental bill of complainants to which said demurrers had been originally interposed on the part of defendants, be made a part of the record of such appeal, as well as the amended bill of complaint this day served and filed [149] in said suit.

Dated this 29th day of April, A. D. 1911.

By the Court,

WM. W. MORROW,

Circuit Judge.

O. K.—D. V. COWDEN.

[Endorsed]: No. 177. In Equity. United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division. George D. Roberts et al., Complainants, vs. The Southern Pacific Company, a Corporation, et al., Defendants.

Order Permitting Filing of Amended and Supplemental Bill of Complaint. Filed May 4, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. B. D. Townsend, Francis J. Heney and A. H. Blatchley, Solicitors for Complainants. [150]

[Amended Bill (in the Nature of a Supplemental Bill).]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

No. 177—BILL IN EQUITY.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. W. ICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),

Complainants,
vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PACIFIC RAILLOAD COMPANY OF NEW MEXICO (a Corporation), Consolidated), [151] and HOMER S. KING, as Trustee, THE CSNTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AIENS-WORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN, and WILLIAM MAHL,

Defendants.

Affecting Southern Pacific Railroad Company's Land Grant of July 27th, 1866, and June 28th, 1870.

To the Judges of the Circuit Court of the United States of America, in and for the Southern Dis-

trict of California, Northern Division, Ninth Circuit, in Chancery Sitting:

George D. Roberts, of Coalinga, California, and a citizen of the State of California, and Z. L. Phelps, of Coalinga, California, and a citizen of the State of California, and James Maynard, Jr., of San Francisco, California, and a citizen of the State of California, and A. M. Anderson, of Coalinga, California, and a citizen of the State of California, and T. S. Minot, of San Francisco, California, and a citizen of the State of California, and Newton A. Johnson, of Coalinga, California, and a citizen of the State of California, and David Ewing, of Fresno, California, and a citizen of the State of California, and W. Herbert Gates, of Coalinga, California, and citizen of the State of California, and W. M. Johnson, of Coalinga, California, and [152] a citizen of the State of California, and S. J. Gallagher, of Coalinga, California, and a citizen of the State of California, and O. D. Loftus, of Coalinga, California, and a citizen of the State of California, and Thomas Barrett, Sr., of San Luis Obispo, California, and a citizen of the State of California, and H. E. Ayers, of Grangeville, California, and a citizen of the State of California, and James P. Sweeney, of San Francisco, California, and a citizen of the State of California, and Chalk Roberts, of Los Angeles, California, and a citizen of the State of California, and Robert Rendall, of Los Angeles, California, and a citizen of the State of California, and Milo L. Rowell, of Fresno, California, and a citizen of the State of California, and H. T. Faust, of Los Angeles, Cali-

fornia, and a citizen of the State of California, and James Ward of Coalinga, California, and a citizen of the State of California, and J. L. D. Walp, of Coalinga, California, and a citizen of the State of California, and Fred E. Windsor, of Warren, Pennsylvania, and a citizen of the State of Pennsylvania, and M. J. Corey, of Coalinga, California, and a citizen of the State of California, and J. W. Warner, of Coalinga, California, and a citizen of the State of California, and Claud Barnes, of Coalinga, California, and a citizen of the State of California, and W. H. Fraser, of Oilfields, California, and a citizen of the State of California, and Ash Service, of Coalinga, California, and a citizen of the State of California, and Samuel Marshback, of San Francisco, California, and a citizen of the State of California, W. W. Wickline, of Coalinga, California, and a citizen of the State of California, J. M. Robertson, of Coalinga, California, and a citizen of the State of California, P. C. Taylor, of Fresno, California, and a citizen of the State of California, Henry Greenleaf, of Coalinga, California, and a citizen of the State of California, and R. M. Cook, of Coalinga, California, and a citizen of [153] the State of California, and I. W. Alexander, of Coalinga, California, and a citizen of the State of California, and J. W. Swartzlander, of Coalinga, California, and a citizen of the State of California, and Henry Barada, of Coalinga, California, and a citizen of the State of California, and E. M. Scott, or Coalinga, California, and a citizen of the State of California, a voluntary unincorporated association, bring this their amended

bill in the nature of a supplemental bill by leave of Court first had and obtained against:

The Southern Pacific Company, a corporation of Kentucky, and a citizen of the State of Kentucky,

(The Southern Pacific Railroad Company, a corporation of California, and a citizen of the State of California, and

The Southern Pacific Railroad Company, a corporation of Arizona, and a citizen of the Territory of Arizona, and

The Southern Pacific Railroad Company, a corporation of the Territory of New Mexico, and a citizen of the Territory of New Mexico, Consolidated).

Homer S. King, of San Francisco, California, and a citizen of the State of California, and

The Central Trust Company of New York City, New York, and a citizen of the State of New York, and

The Equitable Trust Company of New York City, New York, and a citizen of the State of New York, and

The Kern Trading and Oil Company of San Francisco, California, and a citizen and denizen of the State of California,

And thereupon your orators complain and say unto your Honors:

I.

That the defendant, the Southern Pacific Company, is a *quasi* public corporation, duly organized and existing under and by virtue of the laws of the State of Kentucky, with its head [154] office and principal place of business at 120 Broadway, New

York City, State of New York.

That the Southern Pacific Railroad Company of California is a *quasi* public Corporation, and was duly organized and now exists under and by virtue of the laws of the State of California, for the purpose of constructing, operating and maintaining a certain standard gauge steam railroad within the State of California between certain points within the borders of the said State, and it has its head office and principal place of business in the Flood Building, in the City and County of San Francisco, State of California.

That the Southern Pacific Railroad Company, of Arizona, is a *quasi* public corporation, duly organized and existing under and by virtue of the laws of Arizona, and was consolidated with the defendant, the Southern Pacific Railroad Company of California on or about the 10th day of March, 1902, together with the Southern Pacific Railroad of New Mexico.

That the Southern Pacific Railroad Company of New Mexico is a *quasi* public corporation, duly organized, and existing under and by virtue of the laws of New Mexico, and was consolidated with the defendant, the Southern Pacific Railroad company of California, on or about the 10th day of March, 1902, together with the Southern Pacific Railroad Company of Arizona as aforesaid.

That said three consolidated corporations are wholly owned, dominated, and absolutely controlled by defendant, the Southern Pacific Company of Kentucky, for that, and this, that said defendant, the Southern Pacific company of Kentucky is a "hold-

ing" Corporation and owns all of the capital stock of each of said defendants to wit: The Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company of New Mexico, and the Southern Pacific Railroad Company of Arizona. And [155] your orators are informed and believe has or claims to have some interest by lease or otherwise in all the lands affected by this suit.

That D. O. Mills has died since the commencement of this suit, and prior to filing this supplemental bill, and defendant, Homer S. King, is now sole trustee, in and under a certain Trust Deed, made and executed by defendant, the Southern Pacific Railroad Company of California, on the 1st day of April, 1875, purporting to secure the payment of \$46,000,000, in bonds, to be issued by the said Southern Pacific Railroad Company of California, and claimed by defendants, the Southern Pacific Railroad Company of California, and Homer S. King, to be a lien upon a certain grant of land made by the United States of America to defendant, the Southern Pacific Railroad Company on the 27th day of July, 1877, and is more particularly hereinafter set forth and states, including the lands involved in this suit.

That defendant, the Central Trust Company of New York, State of New York, a private corporation, is sole trustee in and under a certain deed of trust made and executed by the defendant, the Southern Pacific Railroad Company of California, on the 15th day of September, 1894, purporting to secure the payment of \$58,000,000 in bonds issued and to be issued by the said Southern Pacific Railroad Com-

pany, defendant, herein, also in a certain supplemental Trust Deed, between the same parties, limiting said issue of bonds to \$30,000,000 and claimed by defendants, the Southern Pacific Railroad Company of California, and The Central Trust Company of New York, to be a lien upon a certain grant of lands, made by the United States of America to defendant, the Southern Pacific Railroad company on the 27th day of July, 1866, as is more particularly hereinafter set forth and states, including the lands involved in this suit.

That defendant, the Equitable trust Company of New York [156] a private corporation, is sole trustee in and under a certain deed of trust, made and executed by the defendant, the Southern Pacific Railroad Company of California, on the 3d day of January, 1905, purporting to secure the payment of \$88,502,000 in refunding bonds issued and to be issued by the said Southern Pacific Railroad Company defendant herein, and claimed by defendants, the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico, and defendant the Equitable Trust Company of New York, to be a lien upon the entire assets, properties, franchises and a certain grant of lands made by the United States of America to defendant, The Southern Pacific Railroad Company, on the 27th day of July, 1866, and is more particularly hereinafter set forth and stated, including the lands involved in this suit, and that for and on account of this Trust Deed, your orators say unto

your Honors the defendants, The Southern Pacific Railroad Company of Arizona, and the Southern Pacific Railroad Company of New Mexico are mentioned herein as defendants coupled to and consolidated with defendant, The Southern Pacific Railroad Company of California, as above stated.

That the Kern Trading and Oil Company, for more than five years last past has been, and now is, a corporation, organized and existing under and by virtue of the laws of the State of California, and has its principal office at the City of San Francisco, in said State, and at all times since its organization has been and now is wholly owned, dominated, controlled and operated by the defendant, the Southern Pacific Railroad Company, for the ulterior purpose of doing certain things which, by law, the said the Southern Pacific Railroad Company is prohibited under the law and its charter from doing, viz., mining for petroleum and other minerals, and dealing with the same as a commodity, and [157] claiming, for the benefit of the said Southern Pacific Railroad Company, as an alleged lessee of the said Southern Pacific Railroad Company, the certain prohibited and interdicted mineral lands hereinafter referred to; the said The Kern Trading and Oil Company does the things and makes the illegal claims and demands herein-after set forth against complainants, and the lands herein described, and all of which is to the prejudice of complainants as hereinafter appears and is set forth.

That your orators are informed and believe, and therefore allege the fact to be, and show unto your

Honors that Edwin T. Dumble, George L. King, C. H. Redington, J. E. Foul^s, W. A. Worthington, and W. R. Scott, are officers and directors of the defendant, The Kern Trading and Oil Company, and that Julius Kruttschnitt, J. A. Jones, William F. Herrin, I. W. Hellman, Homer S. King, James K. Wilson, J. L. Willcutt, F. K. Ainsworth, E. E. Calvin, William Hood, A. K. Van Deventer, C. H. Redington, Joseph Hellen and William Mahl are officers and directors of defendants, the Southern Pacific Railroad Company of California, consolidated as aforesaid.

II.

Your orators further say and show unto your Honors that there was heretofore passed by the Congress of the United States of America, and duly approved by the President of the United States of America, on the 27th day of July, 1866, a certain Act, granting certain lands within a certain described radius, to the defendant, The Southern Pacific Railroad Company of California, a corporation, subject, however, to certain mineral reservations, exceptions, exclusions, restrictions and limitations, in said Act contained, and that said Act, granting said lands as aforesaid, thereupon became, and now is, a public law, and that a construction, and an interpretation of sections three, and eighteen of said Acts of Congress is sought in this suit, coupled to [158] all acts and joint resolutions amendatory thereof and supplementary thereto, and all acts of the Department of the Interior of the United States of America, hereinafter set forth and also the patent, herein-

after set forth, made, executed, and delivered by the United States of America to defendant, the Southern Pacific Railroad Company of California, on the 10th day of July, 1894, covering and embracing all lands involved in this suit.

And your orators further say and show unto your Honors, that section three of said Act of July 27th, 1866, is in words, and figures as follows, to wit:

“Section 3, AND BE IT FURTHER ENACTED, that there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and Telegraphic line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, and munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, whenever on the lines thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption of other claims or rights, at the time the line of said railroad is designated by a plat thereof, filed in the office of the Commissioners of the General Land Office; and whenever, prior to said time, any of said sections shall have been granted, sold reserved, occupied by homestead settlers or pre-empted or

otherwise disposed of, other lands shall [159] be selected by said Company in lieu thereof, under the directions of the Secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of the said alternate sections, and not including the reserved numbers; provided further, that the Railroad Company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company' or may consolidate, confederate, and associate with said Company upon the terms named in the first and seventeenth sections of said Act; Provided further, that all mineral lands be, and the same are hereby, excluded from the operations of this Act, in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: And Provided Further, that the word 'mineral' when it occurs in this Act, shall not be held to include iron and coal: And Provided further, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad."

And your orators further say that Section eighteen of said Act is in words and figures as follows, to wit:

"Section 18. And be it further enacted that the Southern Pacific Railroad Company, a Company incorporated under the laws of the State of California, is hereby authorized to connect with said Atlantic and Pacific Railroad, formed under this Act, at such points, near the boundary line of the State

of California, as they shall deem most suitable for the railroad lines to San Francisco, and shall have uniform gauge and rate of freight and fare with said road: and in consideration thereof to aid in its construction, shall have similar grants of land, subject to all the conditions [160] and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

That thereafter and by virtue of a joint resolution of Congress approved June 28th, 1870, certain mandatory conditions were imposed and prescribed, by and under which, said railroad and telegraph line should be constructed, and under and by what terms and conditions patents should be issued by the Secretary of the Interior, to defendant, Th^t Southern Pacific Railroad Company of California, for said granted lands, and said joint Resolution was and is in words and figures as follows, to wit:

"BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said Company in the Department of Interior on the third day of January, eighteen hyndred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the Company to the

Secretary of the Interior, he shall direct an examination of each such section by Commissioners to be appointed by the President, as provided in the Act, making a grant of said Company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraphic line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said Company for the sections of land *coterninus* to each constructed section reported on as aforesaid, to the extent and amount granted to said Company by the said Act of July twenty-seventh, [161] eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said Act.

“Approved June 28th, 1870.”

III.

Your orators further aver and show unto your Honors, that said defendants, The Southern Pacific Railroad Company of California, preparatory to, and for the purpose of, and with the intent to obtain a patent to the lands involved in this suit, and other lands, did, on or about the 9th day of May, 1892, make the following appointment and certificate, pursuant to, and under and by virtue of the Acts of Congress of July 27th, 1866, July 25th, 1868, and Joint Resolution of June 28th, 1870, which said appointment and certificate was, and is, in words and figures as follows, to wit:

“Office of the Southern Pacific Railroad Company,
San Francisco, California.

“I, Joseph L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held by the Board of Directors of said Company, at a meeting held on the (10th) tenth day of May A. D. 1875, and that since that time he has been continuously, and now, is, the Land Agent of the Southern Pacific Railroad Company.

“IN WITNESS WHEREOF I have hereunto set my hand and affixed the Corporate Seal of the Southern Pacific Railroad Company on the 9th day of May, A. D. 1892.

[Seal]

“JOSEPH L. WILLCUTT.”

That thereafter, and pursuant to said Acts of Congress and in accordance therewith, and with actual knowledge, absolute acceptance [162] thereof, complete acquiescence therein, and in due recognition of the same, said Jerome Madden did, for and on behalf of defendant, The Southern Pacific Railroad Company, make, under and pursuant to the rules and regulations prescribed by the Commissioner of the General Land Office of the United States of America, and he did file a certain list of Sections of lands known, and designated herein and therein as list No. 24 of lands claimed by the Southern Pacific Railroad Company under said grant, which said list of selections include all the lands involved in this suit, and that said selections did and

does bear the following heading, statement, or claim, concerning and referring to said lands, and is duly signed by said Jerome Madden, on behalf of said defendant, and is, in words and figures, as follows, to wit:

“LIST OF LANDS

in the

VISALIA LAND DISTRICT, CALIFORNIA,
Selected by the
SOUTHERN PACIFIC RAILROAD COMPANY
OF CALIFORNIA.

“The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, and under and by virtue of the Act of Congress, approved July 27th, 1866, entitled, ‘An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast,’ and the further Act approved July 25th, 1868, entitled ‘An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California,’ and the Joint Resolutions of Congress, June 28th, 1870, ‘Concerning the Southern Pacific Railroad of California,’ and under and in pursuance of the rules and regulations prescribed by the Commissioners of the General Land Office, hereby [163] makes and files the following lists of Selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the Railroad and Tele-

graph of said Company; being in part for ninth (9th) and seventeenth (17th) sections, (forty 559/1000 miles) of the same, commencing at a point in NE. $\frac{1}{4}$, Sec. 2, T. 19 S., R. 20 E., M. D. B. & M., and ending at *Alcade* which *sai* sections of road and telegraphic have been duly accepted by the President of the United States *if* America, as provided in the aforesaid Acts and Joint Resolutions of Congress, the Selection being particularly described as follows:.....

“JEROME MADDEN,
“Land Agent of the Southern Pacific Railroad Com-
pany.”

That your orators have not inserted said list in detail in this bill of complaint, at any time, for the reason that it would unnecessarily encumber the record, and subserve no pertinent purposes, and therefore is wholly omitted, but the lands immediately affected by this suit are hereinafter fully described and designated as being, and they are a part of the lands included in said list of Selections.

That thereafter, and on or about May 16th, 1894, The Department of the Interior of the United States of America took action on the foregoing *ex parte* statements, and a new list of said lands was made by said Department of the Interior, which said list was and is known and designated in said Department as “LIST NUMBER 19 SOUTHERN PACIFIC RAILROAD LANDS, MAIN LINE, GRANTED LIMITS, LOS ANGELES, INDEPENDENCE, SAN FRANCISCO AND VISALIA DISTRICTS, CALIFORNIA.” And that said list is a duplicate of

list numbered 34, filed by defendant, The Southern Pacific Railroad Company, and hereinbefore referred to in this bill [164] of complaint, and said list so prepared and numbered 19 bears and contains the following findings of facts, to wit:

“DEPARTMENT OF THE INTERIOR.

“General Land Office.

“May 16th, 1894.

“Whereas by the Act of Congress approved July 27th, 1866, and *and* Joint Resolution of June 23, 1870, to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes; authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a Railroad and Telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco, to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for the granting to the said Company every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or otherwise disposed of by the United States and to which pre-emption of homestead claim may not have attached at the time the line of said road is definitely fixed.

"And whereas, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the provisions of the fourth section of the said Act of July 27th, 1866, have reported to him, that the line of said railroad and telegraph, from San Jose to Tres Pinos, and from Alcade to Majare, together comprising two hundred and fifty-two miles, and four hundred and seventy-nine thousandths of a mile, has been [165] constructed and equipped in the manner prescribed by said Act of July A 27, 1866, and accepted by the President,—

"And whereas, the following tracts have been duly listed under the Act aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of sections, approved by the local officers and on file in this office,—

"And whereas, the said tracts of land lie coterminus to the constructed line of said road and are particularly described as follows, to wit:"

That your orators again omit any detailed list of said lands, for the reasons hereinbefore set forth and stated, and submit to your Honors that it would be unnecessary to insert such list and that such matters would be impertinent.

Your orators further show and aver, that thereafter, for the purpose of carrying said land to patent, and on or before the 16th day of May, 1894, the following certificates were made by the General Land Office of the United States of America, through its

examiners and approved by its Chief of Division in the following words and figures, to wit:

“General Land Office,

“Railroad Division.

“May 16th, 1894.

“We hereby certify that the foregoing list has been carefully examined in connection with the records and plats of this office and the tracts therein described are found to be vacant and unappropriated and within the primary limits of the grant of July 27th, 1866, to the Southern Pacific Railroad Company (Main Line), and subject to approval and patent to said Railroad Company under said Act.

“M. B. HARVEY,

“M. NIVEN,

Examiners.

“Approved, Chief of Division.” [166]

“General Land Office,

“Division of Swamp Lands,

“Washington, D. C., June 23, 1894.

“This certifies that the foregoing list No. 19, Southern Pacific Railroad, aggregating 440,900.85 acres has been carefully examined in connection with the swamp land records of this office, and that the same has been found free from conflict.

“C. T. PIERCE,

“Examiner.

“Approved: EDMOND MALLET,

“Chief of Division.”

Your orators further aver and show unto your Honors, that based upon and acting upon the foregoing *ex parte* statements, the following final order

or decree was made and entered in the Department of the Interior of the United States of America, by its duly authorized officials, to wit: The Commissioner of the General Land Office and the Secretary of the Interior and said order, decree or judgment was and is in words and figures as follows, to wit:

“Now therefore, as it has been found on a careful examination of the foregoing list in connection with the authenticated map on file in the *Central Land Office*, of the Survey of the *Southern Pacific Railroad route*, that the lands fall within the twenty mile lateral limits of said route, and that the said lands so far as the records of the *Central Land Office* show are free from conflict, it is hereby recommended that the tracts described covering four hundred and forty thousand nine hundred acres and twenty-five hundredths of an acre be approved and carried into patent as the lands falling within the grant by the Act aforesaid to the *Southern Pacific Railroad Company of California*, excluding however from the approval and from the transfer in the patent that may issue, ‘All Mineral Lands,’ [167] should any such be found in the tracts aforesaid, but this exclusion according to the terms of the statute shall not be construed to include iron and coal.

“G. W. LAMOREUX, Commissioner.”

“To the Honorable, Secretary of the Interior,
“Department of the Interior,
“Washington, D. C.

“June 27, 1894.

“Approved: Covering four hundred and forty thousand, nine hundred acres and eighty-five hundredths of an acre.

“HOKE SMITH, Secretary.”

IV.

Your orators further say and show unto your Honors, that the patent to the lands involved in this suit, which are embraced within the limits of said Land Grant aforesaid, follows said Joint Resolution and Act of July 27, 1866, and the pertinent and essential part thereof is in words and figures as follows, to wit:

“TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

“WHEREAS, by the Act of Congress approved July 27, 1866, and the Joint Resolutions of June 28, 1870, to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for Postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a Corporation existing under the laws of the State to construct a Railroad and Telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and [168]

provision is made for granting to the said Company every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of the said road 'not sold, reserved or otherwise disposed of by the United States, and to which pre-emption, or homestead claim may have not attached at the time the line of the said road is definitely fixed.

"*And whereas*, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the said Act of July 27th, 1866, have reported to him that the line of the said railroad and telegraph from San Jose to Tres Pinos, and from Alcade to Mojave, together comprising two hundred and fifty-two and four hundred and twenty-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27th, 1866, and accepted by the President.

"*And whereas*, the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original list or selections approved by the local officers and on file in this office.

"*And whereas*, the said tract of land lies co-terminus to the constructed line of the said road *are* particularly described as follows, to wit: South of

the base line and east of Mount Diablo Meridian,
State of California.

“All of sections 5, 7, 11, 17, 19, 29, 31.

“Township 20, Range 15.

“All of sections 15, 25.

“Township 23, Range 17. [169]

“All of section 31.

“Gownship 23, Range 18.

“Township 21, Range 15.

“All of section 5, and

“All of section 7. (With other lands contained in
said patent not affected by this suit.)

“The said tracts described in the foregoing make
the aggregate area of 440,900.85.

“NOW KNOW YE, That the United States of America in consideration of the premises and pursuant to the Acts of Congress, have given and granted by these presents *to give and to grant unto* the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing.

“Yet excluding and excepting ‘All Mineral Lands’ should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, *and shall not be construed to include ‘coal and iron lands.’*

“To have and to hold the same with the appurte-
nances unto the said Southern pacific company and
to its successors and assigns forever:

“In testimony whereof, I, Grover cleveland,
President of the United States have caused these

letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

“Given unto my hand at the City of Washington, this tenth day of July, in the year of our Lord One Thousand eight hundred and ninety-four, and in the Independence of the United States, the one hundred and nineteenth.

“By the President, GROVER CLEVELAND,
“H. M. KEAN, Secretary.”

V.

Your orators further show to your Honors, that prior to the [170] making and delivery of the aforesaid patent to the defendant the Southern Pacific Railroad Company, no investigation or examination of the lands described therein, had been made on behalf of the Government by the Commissioner of the General Land Office, the Secretary of the Interior, or by any other officer, Agent or employee of the Government for the purpose of ascertaining the character of said lands or as to whether or not they were mineralized, and no decree or judgment was ever made or entered in relation to their character, and the lands here in question were, at the time of the issue of said patent, known mineral lands, and it was for this reason that there was inserted in said patent the following clause, reservation, exclusion and exception, to wit: “Yet excluding and excepting all mineral lands, should any such be found in the tracts aforesaid.”

VI.

Your orators further say and show unto your Honors, that defendant, the Southern Pacific Rail-

road Company, did by virtue of its aforesaid acts, set forth in paragraph III of this bill, assent to all the terms and conditions of said Act of Congress, approved July 28th, 1866, and Joint Resolutions of June 28th, 1870, and did wholly submit to the terms and conditions of said Acts and did agree that said Southern Pacific Railroad and its assigns, its successors, and all persons in privity with it, would recognize, respect, abide by, be bound by, be absolutely held by the reservations, exception and exclusion of all mineral lands contained in said grant, *should any such be found*, according to the tenor, conditions, restrictions, terms and limitations and reservations thereof, and contained in said grant and said Joint Resolution, and that said defendant, the Southern Pacific Railroad Company of California, did thereupon, and then and there recognizing said Acts of Congress, apply to the Secretary of the Interior of the United States of America for a certain [171] patent, which is hereinbefore set forth, and which said patent covers and embraces all lands involved in this suit, and that said application, so made, was based upon said Act of Congress and Joint Resolution and the whole thereof; and the order or decree of the Department of the Interior, and that pursuant to said application and under said order, said patent was issued to defendant, the Southern Pacific Railroad Company of California, on the 10th day of July, 1894, and said defendant knowingly received, and accepted said patent, and the whole thereof, in all its parts, from the United States of America, and the United States of

America have never directly or indirectly, by itself, or others, waived or repudiated the same, nor any of the terms, exceptions, reservations, or exclusions therein contained, and said patent so received and accepted by said defendant contained, and does contain~~d~~ the following clinging, continuing, exclusion and nondefensible reservation, exception, and restriction, based upon said Act of Congress, and said Joint Resolution of June 30th, 1870, and the final decree of the Department of the Interior, and said reesrvation was, and is in words as follows, to wit:

"YET EXCLUDING AND EXCEPTING ALL MINERAL LANDS SHOULD ANY SUCH BE FOUND IN THE TRACTS AFORESAID, BUT THIS EXCLUSION AND EXCEPTION ACCORDING TO THE TERMS OF THE STATUTE, SHALL NOT BE CONSTRUED TO INCLUDE COAL AND IRON LANDS."

And your orators further say and show unto your Honors, and do hereby insist and submit, that the defendant, the Southern Pacific Railroad Company of California, and all persons in privity with it, and each and all defendants herein, are bound by the aforesaid acts of defendant, the Southern Pacific Railroad Company, and are estopped in equity and good conscience to claim any interest, estate or title, of any nature whatsoever, in or to any of said lands involved in this suit, by virtue of said acts [172] hereinbefore or hereinafter set forth and stated.

VII.

V.

And your orators further say and show unto your

Honors, that the said Act of Congress granting said lands to defendant, The Southern Pacific Railroad Company of California, and all Acts and Joint Resolutions supplementary thereto, or amendatory thereof, and the Acts of the Department of the Interior, of the United States of America, in issuing said patent to the lands involved in this suit, and the recording of said patent, were and are public acts, and should be taken as, and termed public acts in all courts and places whatsoever, as by said acts, intended, and to which your orators beg leave to refer.

VIII.

Your orators further say and show unto your Honors, that defendant, Homer S. King, as Trustee, of the first deed of trust, hereinbefore referred to, placed upon said granted lands, as aforesaid, by defendant, the Southern Pacific Railroad Company of California, and made, executed, and delivered, by said defendant, on or before the first day of April, 1875, by virtue thereof, claims to have some estate, title or interest in and to all the lands involved in this suit, adverse to your orators, but your orators insist and submit, that on account of the matters and things in this bill stated, that each, all or any claim made by said defendant under said trust deed or otherwise are invalid, illegal, and wholly and utterly void, and of no effect against your orators, and that said defendants have no rights, interest or estate in any part thereof, for that said deed was made and accepted with amfull knowledge of said Act of Congress and Joint Resolution.

And your orators further say and show unto your Honors, that defendant, the Central Trust Company of New York, a corporation, [173] as trustee of the second trust deed, hereinbefore referred to, and placed upon said granted lands involved in this suit, as aforesaid, by defendant, the Southern Pacific Railroad Company, and made, executed, and delivered, by said defendant, on or about the first day of September, 1893, by virtue thereof, claim to have some estate, right, *title* or interest in and to all the land involved in this suit, adverse to your orators, but your orators insist and submit that on account of the matters and things in this bill stated, that each, all, or any claims made by said defendant under said trust deed, or otherwise are invalid, illegal and wholly and utterly void and of no effect, and that said defendant has no rights, interests or estate in or to any of the lands involved in this suit, as against your orators, or any part thereof; for that said deed was made and accepted with a full knowledge of said Act of Congress and Joint Resolution.

And your orators further say and show unto your Honors, that defendant, The Equitable Trust Company of New York, a corporation, as trustee of the third trust deed hereinbefore referred to, as aforesaid, and placed upon said granted lands by defendant, the Southern Pacific Railroad Company, and made, executed and delivered, by said defendant on or about the 3d day of January, 1905, by virtue thereof claim to have some interest, estate, right or title in and to all the lands involved in this suit, adverse to your orators, but your orators in-

sist and submit that on account of the matters and things in this bill stated, that each, all or any claims made by said defendant under said trust deed, or otherwise are invalid, illegal and wholly void and of no effect, and that said defendant has no rights, interest or estate in or to any of the lands involved in this suit as against your orators, or any part thereof, for that said deed was made and accepted with full knowledge of said Act of [174] Congress and Joint Resolution.

And your orators further say and show unto your Hnoors, that defendant, the Kern Trading and Oil Company, is a suppositious corporation, and exists in form only, and is composed of and officered by, and absolutely dominated, owned and managed and controlled by certain dummies, employees, officers, and directors of its confederate, the Southern Pacific Railroad Company, a corporation, defendant herein, and was organized by the officers and agents of said defendant, The Southern Pacific Railroad Company, with the fraudulent intent, and for the unlawful purpose of doing certain things indirectly, which defendant its confederate, the Southern Pacific Railroad Company, a corporation could not do directly; that is to say, to sink, develop, operate, and monopolize oil wells, and by such actions to monopolize and hold unto itself all mineral oil lands within the borders or outlines of its said grant, in the State of California, contrary to said Act of Congress and said Joint Resolution, and that pursuant to that fraudulent intent, and to carry out said surreptitious and deceitful scheme, confederating to

gether with said defendant, the Southern Pacific Railroad Company, a corporation, has, at divers times, since the incorporation of defendant, its confederate, and conduit, the Kern Trading and Oil Company, which was incorporated on or about the 21st day of May, 1903, secretly made and entered into, certain leases of certain lands, to this defendant, the Kern Trading and Oil Company, and the defendant, the Southern Pacific Railroad Company, conspiring and confederating together with the Kern Trading and Oil Company, and with defendants Edwin T. Dumble, George L. King, J. B. Foulds, W. A. Worthington, W. R. Scott, and C. H. Redington, directors, dummies and officers of said defendant, and further confederating with each other, and the defendant, the Southern Pacific [175] Company of Kentucky, and with defendants, I. W. Hellman, H. A. Jones, William F. Herrin, Homer S. King, James K. Wilson, J. L. Willcutt, F. K. Ainsworth, E. E. Calvin, William Hood, A. K. Vandeventer, Joseph Hellman and William Hood, directors, and officers and stockholders of defendant, the Southern Pacific Railroad Company have for the purpose of circumventing the laws, obliquely evading its effects, and creating and maintaining a monopoly as aforesaid, made, executed and delivered many secret leases from itself to itself through the medium of defendant, the Kern Trading and Oil Company, using it as a fraudulent vehicle, conduit or *g-between* to carry out said fraudulent conspiracy. That said leases are not recorded in any public places of the State

of California, but are clandestinely held and secreted by the defendant, The Southern Pacific Railroad Company, and your orators do not know, and are unable to find out, or ascertain just what covenants and conditions said leases contain, when they were executed, or when they expire, or what lands are claimed to be affected by said fraudulent leases, so secretly and surreptitiously executed and delivered, to said surreptitious corporation, defendant, the Kern Trading and Oil Company, but your orators say, based upon the foregoing facts and information and believe that defendant, the Kern Trading and Oil Company *claim* to have some estate, right, title or interest in and to all of the property involved and claimed in this suit by your orators by virtue of said clandestine leases, adverse to your orators, but by virtue of and on account of the matters and things in this bill stated, all claims or any claims made by said suppositious and fraudulent corporation, the Kern Trading and Oil Company, defendant, affecting any of the lands involved herein or claimed by your orators in this suit, under said fraudulent leases or otherwise are invalid, illegal and wholly void and of no effect and said defendant has neither rights, interests, or estate [176] in or to any of the lands involved in this suit, or any part thereof, as against your orators.

And your orators further say, and show unto your Honors, that all of the lands hereinafter described and claimed by your orators are vacant, unimproved, uninclosed, and wild lands, and each quarter section thereof is "proved" land and contains mineral oil

and other kindred minerals in large and paying quantities, and that said lands are more valuable for mining purposes than any other, and said defendants have never at any time, gone into or taken possession of any of the lands involved in this suit.

And your orators further aver and show unto your Honors that, prior to the making of the locations hereinafter mentioned, the said locators actually discovered valuable deposits of petroleum and mineral oils, upon each and every one hundred and sixty acres of land involved in this suit and in large and paying quantities on each and every claim herein, and that said petroleum and mineral oil did then and does now actually exist therein and is in large and paying quantities in each and every quarter section and claim. That the lands immediately adjoining, abutting and contiguous to the tracts involved in this suit, and upon all sides of each of said claims, was and is "proved" mineral and oil land, in which petroleum in large and paying quantities has been and now is found, and which contains shale, seepage of oil, and veins of sand-rock, which said veins, oil, and shale did, and now does extend upon, through, underneath and completely across each and all of the said mining claims set forth and described in this suit. That all of the claims hereinbefore described are wholly within the areas of lands previously withdrawn from any but mineral land entry by the Department of the Interior of the United States of America, and each and all of said lands, and the surrounding lands, contiguous thereto have [177] been, and are now classified by the United States of

America through the Department of the Interior as being, and they are exclusively and notoriously mineral oil lands, and have been publicly known to be such since 1892. That on the 10th day of July, 1894, upon which date said patent was issued to, and accepted by the said defendant, the Southern Pacific Railroad Company, as aforesaid, it then and long prior to, well knew, and its officers well knew and had actual knowledge at said time, of the existence of mineral and petroleum in paying quantities in all the lands involved in this suit, and now claimed by your orator and said defendant well knew at the time said patent was issued and accepted by it, and long prior thereto, that said lands involved in this suit and every quarter section thereof contained mineral oils, and other kindred minerals, and that said lands at all times were, and now are more valuable for mining purposes, and the mineral oils therein, than for agricultural purposes, or any other purpose.

Your orators further insist and submit that defendant, the Southern Pacific Railroad Company, does refuse to permit any of the lands involved in this suit to be exploited, developed or improved in any way, manner, shape or form, and the Southern Pacific Company of Kentucky, is conspiring, and confederating with the Southern Pacific Railroad Company of California and the Kern Trading and Oil Company and all of their officers, directors, agents, representatives, and other defendants herein, to withhold said lands from exploitation, and development against the well-defined common rights of your orators and the citizens of the United States of America

to locate and develop said lands, under said exclusion, exception and reservation, in said acts of Congress, and patent contained, and the mining laws of the United States of America, and your orators further insist and submit that neither the defendant, the Southern Pacific Company, the [178] Southern Pacific Railroad Company, nor the Kern Trading and Oil Company, nor their associates, confederates, directors, agents, representatives, officers, co-conspirators, or others connected with them, have any right or authority to withhold said lands from development and exploitation by your orators, or to retard the progress and growth of the community wherein said lands are situated.

IX.

And your orators further show unto your Honors, that your orators and certain grantors herein named did, in Fresno and Kings County, State of California, on the 19th day of June, 1909, and at divers other times, as is more particularly herein set forth and stated, duly take possession of, and did locate, and duly claim, under the mining laws of the United States of America, in good faith, the following described placer mining claims within the limits of said grant which said claims were located as follows, and said notices of location were, and are, together with the endorsements thereon, in words and figures as follows, to wit:

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claimed, under the

Mining Laws of the United States the following described Placed Claim, bounded and described as follows:

Commencing at the northwest corner of Section 5, Township 21 south, Range 15 east, M. D. B. & M., and running south 40 chains, thence east 40 chains; thence north 40 chains; thence west 40 chains to point of beginning, this being the northwest quarter of Section 5, Township 21, south, Range 15, east M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Alphaltum and kindred substances contained [179] therein, also water for domestic and mining purposes, and uses. This claim shall be known as the New View Mining Claim. Is situated in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

T. S. MINOT.

Z. L. PHELPS.

JAMES MAYNARD, Jr.

A. M. ANDERSON.

GEORGE D. ROBERTS.

NEWTON A. JOHNSON.

DAVE EWING.

D. M. SPEED.

S. J. GALLAGHER,

Witness to posting.

[Endorsed]: Files for record at the request of D. S. Ewing, June the 21st, 1909, at 17 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining

Claim, pg. 80, Fresno County Record. R. N. Barstow, County Recorder."

8960.

¶ "LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the southwest corner of Section 7, Township 21 south, Range 15 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this being the southeast quarter of Section 7, Township 21 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, alphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Zeb Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 21st day of June, 1909.

R. M. COOK.

Z. L. PHELPS.

T. S. MINOT.

NEWTON A. JOHNSON.

I. W. ALEXANDER.

GUY H. SALISBURY.

JAS. MAYNARD, Jr.

D. M. SPEED. [180]

R. M. COOK,

Witness to posting.

[Endorsed]: Filed for record at the request of Everts & Ewing, June 21, A. D. 1909, at 6 min. past 11 o'clock AM. M., and recorded in volume 15 of Mining Claims, pg. 108, Fresno County Records. R. N. Barstow, County Recorder. By W. H. Bates, Deputy Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day and claim under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows: Commencing at the northwest corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and running South 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains to the point of beginning, this being the northeast quarter of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, alphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Eleven Mining Claim. Is situate in Fresno County, State of California, located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

T. J. TURNER.

E. M. SCOTT.

D. M. SPEED.

M. E. COOK.

M. J. COREY.

P. W. CYPHER.

GEO. W. WARNER.

CLAUD BARNES.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June the 21st, A. D. 1909, at 25 min. past 8 o'clock A. M. and recorded [181] in Vol. 15 of Mining Claims, pg. 81, Fresno County Records. R. N. Barstow, County Recorder."

8968.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the northwest corner of Section 31, Township 20 south, Range 15 east, M. D. & M., and running south 40 chains, thence East 40 chains, thence north 40 chains, thence west 40 chains, to point of beginning, this being the northwest quarter of Section 31, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the James Oil Mining Claim. Is situated in Fresno County, State of California. Located and a copy of this notice posted

on the ground, this 19th day of June, 1909.

CHARLES JAMES.

CHALK ROBERTS.

ROBERT RENDALL.

HENRY C. KERR.

GEO. EAGLE.

JAMES WARD.

A. M. ANDERSON.

J. L. D. WALP.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 3 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 65, Fresno County Records. R. N. Barstow, County Recorder."

8946. [182]

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the northwest corner of Section 29, Township 20 South, Range 15 East, M. D. B. & M., and running east 40 chains, thence south 40 chains, thence west 40 chains, thence north 40 chains to point of beginning, this being the northwest quarter of Section 29, Township 20 south, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Alphaltum and kindred sub-

stances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Swartzlander Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 19th day of June, 1909.

J. W. SWARTZLANDER.

N. M. SALISBURY.

HENRY BARADA.

S. J. GALLAGHER.

E. N. AYRES.

GEORGE D. ROBERTS.

O. D. LOFTUS.

W. W. AYRES.

Witness:

W. M. JOHNSON.

[Endorsed]: Filed for the record at the request of D. S. Ewing June 21st, A. D. 1909, at 5 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 63, Fresno County Records. R. N. Barstow, County Recorder."

8948.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States, the following described Placer Claim, bounded and described as [183] follows: Commencing at the southeast corner of Section 29, Township 20 South, Range 15 East, M. D. B. & M., and running North 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this being the South-

east Quarter of Section 29, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, A Asphaltum and kindred substances contained therein, also water for domestic and Mining purposes and uses. This claim shall be known as the Tommy Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this 19th day of June, 1909.

T. J. TURNER.

E. M. SCOTT.

M. E. COOK.

M. J. COREY.

P. W. CYPHER.

GEO. W. WARNER.

CLAUD BARNES.

W. H. FRASER.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 1 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 67, Fresno County Records. R. N. Barstow, County Recorder."

8944.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the southeast corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains, to point of beginning, this being the southeast quarter of Section 11, Township 20 south, Range 15 east, M. D. [184] B. & M., and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be *know* as the Fraser Clan Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

W. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,
FRANK PROVOST,
SAM MARSHBACK,
H. R. CORZIER,
J. H. ROBERTSON,
P. C. TAYLOR,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 24 min. past 8 o'clock A. M., and recorded Vol. 15 of Mining Claims, pg. 73, Fresno County Records. R. N. Barstow, County Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the northwest corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and running south 40 chains, thence north 40 chains, thence west 40 chains, to point of beginning, this being the northwest quarter of Section 11, Township 20 south, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres, or less.

Claim all Petroleum, Asphaltum, and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Greenleaf Mining Claim. Is situate in Fresno County, State of California. Located [185] and a copy of this notice posted on the ground, this the 19th day of June, 1909.

HARRY GREENLEAF,
DAVE EWING,
N. M. SALISBURY,
J. W. SWARTZLANDER,
HENRY BARADA,
E. N. AYRES,
W. M. JOHNSON,
GEORGE D. ROBERTS,

Locators.

Witness to Posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 23 min. past 8 o'clock A. M., and recorded in Vol. 15, pg. 90, Fresno County Records. R. N. Barstow, County Recorder."

8966.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claims, bounded and described as follows: Commencing at the southwest corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running north 40 chains, thence East 40 chains, thence south 40 chains, thence west 40 chains, to point of beginning, this being the southwest quarter of Section 5, Township 20, South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Southern Five Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 19th day of June, 1909.

CHARLES JAMES.

CHALK ROBERTS.

ROBERT RENDALL.

HENRY C. KERR.

GEORGE EAGLE.

JAMES WARD.

A. M. ANDERSON.

J. L. D. WALP.

Witness to posting,

S. J. GALLAGHER. [186]

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, 1909, at 18 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 82, Fresno County Records. R. N. Barstow, County Recorder."

8961.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the un-
signed have this day located and claim, under the
Mining Laws of the United States the following de-
scribed Placer Claim bounded and described as fol-
lows: Commencing at the northeast corner of Section
5, Township 20 South, Range 15 East, M. D. B. & M.,
and running south 40 chains, thence west 40 chains,
thence north 40 chains, thence east 40 chains to point
of beginning, this being the northeast quarter of Sec-
tion 5, Township 20 South, Range 15 east, M. D.
B. & M., and containing one hundred and sixty acres
or less.

Claim all petroleum, asphaltum and kindred sub-
stances contained therein, also water for domestic
and mining purposes and uses.

This claim shall be known as the Five Oil Mining
Claim. Is situate in Fresno County, State of Califor-
nia. Located and a copy of this notice posted on the

ground, this the 19th day of June, 1909.

J. M. ROBERTSON,
P. C. TAYLOR,
H. R. CROZIER,
JAMES WARD,
T. J. TURNER,
E. M. SCOTT,
M. J. COREY,
P. W. CYPHER,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 21 min. past 8 o'clock A. M., and recorded in Volume 114 of Mining Claims, pg. 392, Fresno County Records. R. N. Barstow, County Recorder."

8964. [187]

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the southeast corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running north 20 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this being the Southeast Quarter of Section 5, Township 20 South, Range 15, East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances, contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the George W. Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

GEORGE W. WARNER.

CLAUD BARNES.

D. M. SPEED.

DAVE ISLAM.

J. W. SWARTZLANDER.

HENRY BARADA.

E. N. AYRES.

N. M. SALISBURY.

Witness *the* posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, 1909, A. D., at 20 min. past 8 o'clock, A. M., and recorded in Vol. 14 of Mining Claims, pg. 403, Fresno County Records. R. N. Barstow, County Recorder."

8963.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and *clai*, under the Mining Laws of the United States, [188] the following described Placer Claim, bounded and described as follows: Commencing at the southwest corner of Section 29, Township 20 south, Range 15 east, M. D. B. & M., and running north 40 chains, thence east 40

chains, thence south 40 chaine, thence west 40 chains to a point of beginning, this being the southwest quarter of Section 29, Township 20 south, range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Bacon Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
E. N. AYERS,
CHALK ROBERTS,
ROBERT RENDALL,
HENRY C. KERR,
J. L. D. WALP,

Locators.

Witness,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 6 min. past 8 o'clock, A. M., and recorded in Vol. 15 of the Mining Claims, pg. 74, Fresno County Records. R. N. Barstow, County Recorder."

8949.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the

Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the northeast corner of Section 31, Township 20 South, Range 15 East, M. D. B. & M., and running West 40 chains, thence south 40 chains, thence east 40 chains, thence [189] north 40 chains to the point of beginning, this being the northeast quarter of Section 31, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Johnson Oil Mining Claim. Is situate in Fresno County, State of California. Locates and a copy of this notice posted on the ground, this the 19th day of June, 1909.

WM. JOHNSON.

S. J. GALLAGHER.

GEORGE D. ROBERTS.

O. D. LOFTUS.

W. W. AYERS.

JOHN W. BOURDETTE.

WALTER BACON.

H. E. AYERS.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 2 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining

Claims, pg. 66, Fresno County Records. R. N. Barstow, County Recorder.”
8945.

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows: Commencing at the southwest corner of Section 5, Township 21 South, Range 15 East, M. D. B. & M., and running north 40 chains, thence 40 chains East, thence South 40 chains, thence west 40 chains to point of beginning, this being the southwest quarter of Section 5, Township 21 South, Range 15 East, M. D. B. & M., containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances [190] contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the New West Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground this 19th day of June, 1909.

WALTER BACON.

H. E. AYERS.

ROBERT RENDALL.

HENRY C. KERR.

Z. L. PHELPS.

T. S. MINOT.

N. M. SALISBURY.

J. L. D. WALP.

S. J. GALLAGHER,

Witness to posting.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, 1909, at 16 min. past 8 o'clock A. M., and recorded in Vol. 15 of Mining Claims, pg. 72, Fresno County Records. R. N. Barstow, County Recorder."

8959.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: Commencing at the northwest corner of Section 5, Township 20 South, Range 15 East, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains to point of beginning, this being the boundary of the northwest quarter of Section 5, Township 20 south, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Big Five Mining Claim. Is situated in Fresno County, State of California. Located and [191] a copy of this notice posted on the ground this 19th day of June, 1909.

W. M. JOHNSON,
S. J. GALLAGHER,
GEORGE D. ROBERTS,
O. D. LOFTUS,
W. W. AYERS,
JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,

Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing, June 21st, A. D. 1909, at 19 min. past 8 o'clock, A. M., and recorded in Vol. 14, pg. 381, Fresno County Records. R. N. Barstow, County Recorder."

8962.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the United States in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Ground, viz.:

Commencing at the southwest corner of Section 17, Township 20 south, Range 15 East, W. D. B. & M., thence north 40 chains, thence at right angles east 40 chains, thence at right angles South 40 chains, thence at right angles West 40 chains, to place of beginning and containing according to U. S. Surveyor, 160 acres.

The above claim is located by the undersigned loca-

tors as an association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was duly posted on said claim on the 19th day of June, 1909. And said claim is *being* the Southwest quarter, situated in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Eagle Oil Placer Mining [192] Claim. Located the 19th day of June, 1909.

GEORGE EAGLE.

JAMES WARD.

J. L. D. WALP.

E. M. SCOTT.

E. N. aYERS.

A. M. JOHNSON.

T. J. TURNER,

M. E. COOKE.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant's Mining District, County. Dated 190..... Recorded at the request of D. S. Ewing June 21st, A. D. 1909, at 11 min. past 8 o'clock A. M. Vol. 14 of Mining Claims, at page 379 et seq., Fresno County Records. R. N. Barstow, Recorder."

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned, Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining ground, viz.: Commencing at the Southeast Corner of Section 19, Township 20 South, Range 15 East, M. D. B. & M., thence North 40 chains, thence at right angles West 40 chains, *thence at right angles West 40 chains*, thence at right Angles South 40 chains, thence at right angles East 40 chains to the place of beginning, and containing . . . to U. S. Survey 160 acres.

The above claim is located by the undersigned locators as an association of eight persons and contains eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and all kindred minerals and all minerals found therein or thereon, and water for domestic mining and other purposes, and the copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim *is— being* the Southeast quarter situate in the Coalinga Mining District, County of Fresno, State of California. This claim shall be known as the Tom Oil Placer Mining Claim. Located 19th day of June, 1909. [193]

T. J. TURNER.

M. E. COOK.

P. J. CYPHER.

CLAUD BARNES.

E. M. SCOTT.

M. J. COREY.

GEORGE W. WARNER.

W. H. FRASER.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location Claimant. Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 13 min. past 8 o'clock A. M., in Vol. 14 of Mining Claims, page 390 et seq., Fresno County Records. R. N. Barstow, County Recorder."

8956.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.: Commencing at the Northeast Corner of Section 19, Township 20, South, Range 15 East, M. D. B. & M., thence running west 40 chains, thence at right angles South 40 chains, thence at right angles 40 chains East, thence at right angles North 40 chains to place of beginning and containing according to U. S. Surveys 160 acres, being the Northwest Quarter.

The above claim is located by the undersigned locators as an association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and all kindred minerals and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice

was duly posted on said claim on the 19th day of June, 1909, and the said claim is situate in Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Old Oil Olacer Mining Claim located day of June, 1909. [194]

CHARLES JAMES.
CHALK ROBERTS.
HENRY C. KERR.
JAMES WARD.
O. D. LOFTUS.
ROBERT RENDALL.
GEO. EAGLE.
J. L. D. WALP.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location, Claimant
Mining District, County. Dated 19.
Recorded at the request of D. S. Ewing, June 21st,
A. D. 1909, at 14 min. past 8 o'clock A. M., in Vol. 14
of Mining Claims, page 382 et seq., Fresno County
Records. R. N. Barstow, Recorder."

8957.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.: Commencing at the Northeast Corner of Section 17, Township 20, South, Range 15 East, M. D. B. & M., thence West

40 chains, thence at right angles South 40 chains, thence at right angles East 40 chains, thence at right angles North 40 chains to the place of beginning, containing according to U. S. Surveys, 160 acres.

The above claim is located by the undersigned locators as an association of eight persons and containing eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals, and all minerals therein or thereon and water for domestic mining and other purposes, and a copy of this notice *was duly posted on* said Claim on the 19th day of June, 1909.

Being in the Northeast quarter, situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Ishlman Oil Placer Mining [195] Claim, located 19th day of June, 1909.

DAVE ISHLMAN.

FRANK PROVOST.

H. R. CROZIER.

P. C. TAYLOR.

ASH SERVICE.

SAM MARSHBACK.

J. M. ROBERTSON.

HARRY GREENLEAF.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location, Claimant,
Mining District, County Dated,
19 Recorded at the request of D. S. Ewing,

June 21st, A. D. 1909, at 9 min. past 8 o'clock A. m.
in Vol. 15 of Mining Claims, at page 75 et seq.,
Fresno County Records. R. N. Barstow, Recorder." 8952.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the United States, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described Mining Ground, viz.:

Commencing at the Northeast Corner of Section 29, Township 20 South, Range 15 East, M. D. B. & M., being the Northeast quarter. Thence West 40 chains, thence at right angles South 40 chains, thence at right angles East 40 chains, thence at right angles North 40 chains, to the place of beginning and containing according to U. S. Surveys 160 acres.

The above claim is located by the undersigned locators as an association of eight persons and contains eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and kindred minerals, and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was posted on said claim on the 19th day of June, 1909, and said claim is situate in the Coalinga Mining District, County of Fresno, State of California.

[196]

This claim shall be known as the Corey Oil Placer Mining Claim. Located 19th day of June, 1909.

M. J. COREY.

E. N. AYERS.

GEO. W. WARNER.

W. H FRASER.

M. E. COOK.

P. W. CYPHER.

CLAUD BARNES.

DAVE ISHLMAN.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated, 190. Recorded at the request of D. S. Ewing June 21st, A. D. 1909, at 7 min. past 8 o'clock A. M. in Vol. 15 of Mining Claims, pg. 84, Fresno County Records. R. N. Barstow, Recorder."

8950.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the United States in compliance with the requirements of the Revised Statutes of the United States, have this day located *the* following described Placer Mining Ground, viz.: Commencing at the Northwest Corner of Section 17, Township 20 South, Range 15 East, M. D. B. & M., thence South 40 chains, thence east at right angles 40 chains, thence at right angles North 40 chains, thence at right angles West 40 chains to the place of beginning and containing, according to the U. S. Survey 160 acres, being the Northwest quarter.

The above claim is located by the undersigned locators as an association of eight persons, and contains eight Placer Claims, said claim is located for the

purpose of holding and developing all Petroleum, Asphaltum and kindred minerals and all minerals found therein or thereon, and water for domestic mining and other purposes, and a copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim is situate in the Coalinga Mining District, County of Fresno, State of California. [197]

This claim shall be known as the Ayers Oil Placer Mining Claim, located 19th day of June, 1909.

W. W. AYERS.

WALTER BACON.

CHARLES JAMES.

ROBERT RENDALL.

JNO. W. BOURDETTE.

H. E. AYERS.

CHALK ROBERTS.

HARRY C. KERR.

Witness *the* posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant Mining District, County. Dated 190. . . . Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 12 min past 8 o'clock A. m., in Vol. 14 Mining Claims, page 402, Fresno County Records. R. N. Barstow, Recorder."

8955.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned Citizens of the United States in compliance with the requirements of the Revised Statutes of the

United States, have this day located the following described Placer Mining Ground, viz.:

Commencing at the Southwest corner of Section 7, Township 20, South, Range 15 East, M. D. B. & M., being the Southeast Quarter thence North 40 chains, thence at right angles East 40 chains, thence at right angles South 40 chains, thence at right angles West 40 chains to place of beginning and containing according to U. S. Survey 160 acres.

The above claim is located by the undersigned locators as an association of eight persons, and contains eight Placer Claims. Said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and other kindred minerals and all minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was posted on said *clai*, on the 19th day of June, 1909, and said [198] claim is situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Bourdette Oil Placer Mining Claim, located 19th day of June, 1909.

JNO. W. BOURDETTE.

WALTER BACON.

E. N. AYERS.

ASH SERVICE.

W. W. AYERS.

N. E. AYERS.

A. M. ANDERSON.

FRANK PROVOST.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant..... Mining District, County Dated 190..... Recorded at the request of D. S. Ewing, June 21st, A. D. 1909, at 8 min. past 8 o'clock A. M. in Vol. 15, of Mining Claims, at page 77 et seq., Fresno County Records. R. N. Barstow, Recorder." 8951.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the Unites States, in compliance with the requirements of the Revised Statutes of the Unites States have this day located the following described Placer Mining Grounds, Viz.:

Commencing at the Southeast corner of Section 17, Townahip 20 South, Range 15 East, M. D. B. & M., thence North 40 chains, thence at right angles West 40 chains, thence at right angles south 40 chains, thence at right angles East 40 chains to the place of beginning and containing according to the U. S. Survey 160 acres.

The above claim is located by the undersigned locators as an association of eight persons, and contains eight Placer Claims, said claim is located for the purpose of holding and developing all Petroleum, Asphaltum and all kindred minerals, and all minerals found therein or thereon, and water for domestic, mining [199] and other purposes, and a copy of this notice was duly posted on said claim, on the 19th day of June, 1909, and said claim being the Southeast quarter situate in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Ewing Oil Placer Mining Claim. Located 19th day of Jjne, 1909.

DAVE EWING.

J. W. SWARTZLANDER.

W. M. JOHNSON.

GEO. D. ROBERTS.

N. M. SALISBURY.

HENRY BARADA.

S. J. GALLAGHER.

O. D. LOFTUS.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location. Claimant.....
Mining District..... County. Dated..... 19.....
Recorded at the request of D. S. Ewing, June 21st,
A. D. 1909, at 10 min. past 8 o'clock A. M. in Vol.
15 of Mining Claims, page 85, Fresno County Rec-
ords. R. N. Barstow, Recorder."

8953.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the under-signed citizens of the Unites States, in compliance with the Revised Statutes of the Unites States, have this day located the following described Placer Min-ing Ground, viz.:

Commencing at the quarter section corner in the west line of Section 19, Township no. 20, South of Range 15, East, M. D. B. & M., Fresno County, California, thence south 20 chains, thence at right angles east 40 chains, thence at right angles north 40 chains, thence at right angles west 40 chains, to the

place of beginning, containing 80 acres as per U. S. Survey.

The above claim is located by the undersigned locators as an association of eight persons, and contains eight Placer claims. Said claim is located for the purpose of holding and [200] developing all Petroleum, Asphaltum and all kindred minerals and other minerals found therein or thereon, and water for domestic, mining and other purposes, and a copy of this notice was duly posted on said claim on the 19th day of June, 1909. Being the north half of the Southwest quarter situate in the Coalinga Mining District, County of Fresno, State of California. This claim to be known as the New Oil Placer Mining Claim. Located 19th day of June, 1909.

W. M. JOHNSON.

A. M. ANDERSON.

S. J. GALLAGHER.

GEO. D. ROBERTS.

Witness to posting,

W. M. JOHNSON.

[Endorsed]: Notice of Location.....ClaimantMining District. County..... Dated..... 190..... Recorded at request of D. S. Ewing June 21st, A. D. 1909, at 15 min. past 8 o'clock A. M. in Vol. 15 of Mining Claims at page 91 et seq., Fresno County Records. R. N. Barstow, Recorder." 8958.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following

described Placer Claim, bounded and described as follows: Commencing at the Quarter Corner in east line of Section 7, Township 21 South, Range 15 East, M. D. B. & M., and running north 20 chains, thence west 80 chains, thence south 20 chains, thence east 80 chains, to point of beginning, this being the south half of Section 7, Township 21 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. [201]

This claim shall be known as the Seven Oil Mining Claim. Is situate in Fresno County, State of California. Located and a copy of this notice posted on the ground, this the 21st day of June, 1909.

Z. L. PHELPS,
A. M. ANDERSON,
E. M. SCOTT,
M. J. COREY,
R. M. COOKE,
T. S. MINOT,
WATER BACON,
W. W. AYERS,

Locators.

R. M. COOKE,

Witness to posting.

[Endorsed]: Filed for record at the request of Everts & Ewing June 21st, A. D. 1909, at 5 min. past 8 o'clock A. M., and recorded in Vol. 15, of Mining Claims, pg. 107, Fresno County Records. R. N.

Barstow, County Recorder. By W. H. Bates, Deputy Recorder."

8994.

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claims, bounded and described as follows:

Commencing at the Southwest corner of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and running North 40 chains, thence East 40 chains, thence south 40 chains, thence west 40 chains to point of beginning, this being the Southwest quarter of Section 11, Township 20 South, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Greater Mining Claim. Is situate in Fresno County, State of California.

Located and a copy of this notice posted on the ground [202] this 19th day of June, 1909.

S. J. GALLAGHER,

D. M. SPEED,

O. D. LOFTUS,

W. W. AYERS,

JNO. W. BOURDETTE,

WALTER BACON,

H. E. AYERS,
CHALK ROBERTS,
Locators.

Witness to posting,

S. J. GALLAGHER.

[Endorsed]: Filed for record at the request of D. S. Ewing June 21st, A. D. 1909, at 22 min. past 8 o'clock A. M., and recorded in Vol. 14 of Mining Claims, pg. 384, Fresno County Records, R. N. BARSTOW, County Recorder."

8965.

"NOTICE OF LOCATION, PLACER CLAIM.

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the United States, in compliance with the Revised Statutes of the United States, have this day located the following described Placer Mining Ground, viz.:

Commencing at the Southwest corner of Section 7, Township 21 South, Range 15 east, M. D. B. & M., and running thence north 40 chains, east 40 chains, south 40 chains, thence west 40 chains, to point of beginning, being Lots no. 3, No. 4, No. 5, No. 6, according to U. S. Surveys, containing 160 acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses, situated in the Coalinga Mining District, County of Fresno, State of California.

This claim shall be known as the Buster Oil Placer Mining Claim. Located 21st day of June, 1909.

T. J. TURNER.

G. W. WARNER.

H. R. CROZIER.
Z. L. PHELPS.
P. W. CYPHER.
W. H. FRASER.
DAVE EWING.
GEO. D. ROBERTS.

Witness to posting,

R. M. COOK. [203]

[Endorsed]: Notice of Location..... Claimant Mining District, County. Dated, 190—. Recorded at the request of Everts & Ewing, June 21st, A. D. 1909, at 7 min. past 11 o'clock, A. M. in Vol. 15 of Mining Claims, at page 96, Fresno County Records. R. N. Barstow, Recorder. By W. H. Bates, Deputy Recorder.”
8996.

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the southeast corner of Section 15, Township 23 south, Range 17 East, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this being the southeast quarter of Section 15, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic

and mining purposes and uses.

This claim shall be known as the Dave Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

DAVE EWING.

GUY H. SALISBURY.

J. W. SWARTZLANDER,
HENRY BARADA.

E. N. AYERS.

W. M. JOHNSON.

S. J. GALLAGHER.

GEO. D. ROBERTS.

Witness to posting,

S. J. GALLAGHER.” [204]

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

Commencing at the southeast corner of Section 25, Township 23 South, Range 16 East, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, this being the southeast quarter of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic

and mining purposes and uses.

This claim shall be known as the M. J. C. Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

M. J. COREY,
P. W. CYPER,
GEO. W. WARNER,
CLAUD BARNES,
M. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,
FRANK PROVOST,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 19 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 459, Kings County Records.
Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: [205]

Commencing at the northeast corner of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and running south 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains to point

of beginning this being the northeast quarter of Section 25, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Kerr Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

HENRY C. KERR,
GEORGE EAGLE,
JAMES WARD,
A. M. ANDERSON,
J. L. D. WALP,
T. J. TURNER,
E. M. SCOTT,
M. E. COOKE,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 18 min. past 8 o'clock A. M., in Vol. 3 of Miscl., page 459, Kings County Records.
Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following

described Placer Claim, bounded and described as follows:

Commencing at the southwest corner of Section 23, Township 23 South, Range 17 East, M. D. B. & M., and running north 40 chains, thence 40 chains east, thence south 40 chains, thence west 40 chains to point of beginning, this being the southwest [206] quarter of Section 23, Township 23, South Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the Loftus Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

O. D. LOFTUS,
W. W. AYERS,
JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
CHARLES JAMES,
CHALK ROBERTS,
ROBERT RENDALL,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 17 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 458, Kings County Records. Jas. M. Bowman, Recorder."

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

Commencing at the northwest corner of Section 23, Township 23 South, Range 16 East, M. D. B. & M., and running south 40 chains, thence East 40 chains, thence north 40 chains, thence west 40 chains to point of beginning, this being the northwest quarter of Section 23, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. [207]

This claim shall be known as the J. W. Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

J. M. SWARTZLANDER,
HENRY BARADA,
E. N. AYERS,
D. M. SPEED,
W. M. JOHNSON,
S. J. GALLAGHER,
O. D. LOFTUS,
GEO. D. ROBERTS,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 16 min. past 8 o'clock A. M. in Vol. 3 of Miscel., page 458, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the northwest corner of Section 15, Township 23, South, Range 17 West, *W. B. D. & M.*, and running South 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains to the point of beginning, this being the northwest quarter of Section 15, Township 23 south, Range 17 East, *M. D. B. & M.*, and containing one hundred and sixty acres or less.

Claim all Petroleum, Asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Roberts Oil Mining [208] Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

GEORGE D. ROBERTS.

O. D. LOFTUS.

W. W. AYERS.

JNO. W. BOURDETTE,
WALTER BACON.

H. E. AYERS.

CHAS. JAMES.

CHALK ROBERTS.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 12 min. past 8 o'clock A. M. in Vol. 3 of Miscel., page 456, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the southeast corner -*f* Section 23, Township 23 South, Range 17 East, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to the point of beginning this being the southeast quarter of Section 23, Township 23 south, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Prevost Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909. Frank Prevost, Sam Marshback, H. R. Crozier, J. M. Robertson, P. C. Taylor, Harry Greenleaf, Dave Ewing, N.

M. Salisbury, Locators.” [209]

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 15 min. past 8 o'clock, in Vol 3 of Miscel., page 457, Kings County Records. Jas. M. Bowman, Recorder.”

“LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the southwest corner of Section 25, Township 23 south, Range 17 east, M. D. B. & M., and running north 40 chains, thence east 40 chains, thence south 40 chains, thence west 40 chains, to the point of beginning, this being the southwest quarter of Section 25, Township 23 soutg, Range 17 East, M. D. B. & M. and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Barada Oil Mining claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

HENRY BARADA,

E. W. AYERS,

D. M. SPEED,

W. M. JOHNSON,
S. J. GALLAGHER,
GEORGE D. ROBERTS,
Locators, and
O. D. LOFTUS and
W. W. AYERS,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 21 min. past 8 o'clock A. M., in Vol. 3 of Miscel. page 460, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this [210] day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

COMMENCING at the northwest corner of Section 25, Township 23 south, Range 17 East, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains to the point of beginning, this being the northwest quarter of Section 25, Township 23 south, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum *ad* kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Uncle Sam Oil Mining Claim. Is situate in Kings County, State of California.

Located, and a copy of this notice posted on the ground this the 19th day of June, 1909.

SAM MARSHBACK,
H. R. CROZIER,
J. H. ROBERTSON,
P. C. TAYLOR,
HARRY GREENLEAF,
DAVE EWING,
GUY SALISBURY and
J. W. SWARTZLANDER,
Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 20 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 460, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States the following described Placer Claim, bounded and described as follows:

COMMENCING at the northeast corner of Section 15, Township 23 south, Range 17 east, M. D. B. & M., and running south 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains to the point of beginning this being the northeast [211] quarter of section 15, Township 23 south, range 17 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred sub-

stances contained therein, also water for domestic and mining *purpose* and uses.

This claim shall be known as the Fifteen Oil Mining Claim. Is situate in Kings County, State of California. Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

DAVE ISHLMAN,
ASH SERVICE,
FRANK PREVOST,
SAM MARSHBACK,
H. R. CROZIER,
W. M. JOHNSON,
P. C. TAYLOR,
HARRY GREENLEAF,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 10 min. past 8 o'clock A. M., in Vol. 3, Miscel., page 455, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the northeast corner of Section 23, Township 23 South, Range 17 East, M. D. B. & M. and running south 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains

to the point of beginning, this being the northeast quarter of Section 23, Township 23, — Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses. This claim shall be known as the Cooke Oil Mining Claim. Is situate in Kings County, State of California. Located and a copy of this notice posted on the ground this 19th [212] day of June, 1909.

M. E. COOKE,
M. J. COREY,
P. W. CYPHER,
GEO. W. WARNER,
CLAUD BARNES,
W. H. FRASER,
DAVE ISHLMAN and
ASH SERVICE,

Locators.

Witness to posting,

S. J. GALLAGHER.

Record at the request of A. M. Anderson, June 21st, A. D. 1909, at 14 min. past 8 o'clock, in Vol. 3 of Miscel., Recorded, page 457, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

"NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the southeast corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M. and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains, to the point of beginning, this being the southeast quarter of Section 31, Township 2e3 South, Range 18 East, M. D. B. & M. and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining *purpose* and uses. This claim shall be known as the Ward Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

JAMES WARD,
A. M. ANDERSON,
J. L. D. WALP,
T. J. TURNER,
E. M. SCOTT,
M. E. COOKE,
M. J. COREY and
P. W. CYPHER,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909 at 8 min. past 8 o'clock A. M., in Vol. 3 of Miscel., [213] page 454, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE."

"NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the southwest corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and running north 40 chains, thence east 40 chains, thence south 40 chains, thence west 40 chains to the point of beginning, this being the southwest quarter of Section 31, Township 23 south, Range 18 east M. D. B. & M., and containing one hundred and sixty acres or less.

Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes and uses.

This claim shall be known as the J. M. R. Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

J. M. ROBERTSON,
P. C. TAYLOR,
HARRY GREENLEAF,
DAVE EWING,
N. W. SALISBURY,
J. W. SWARTZLANDER,
HENRY BARADA and
D. M. SPEED,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st A. D. 1909, at 9 min. past 8 o'clock A. M., in Vol. 3 of Miseel., page 454, Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows: [214]

COMMENCING at the northwest corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence west 40 chains, thence north 40 chains, to the point of beginning, this being the northwest quarter of section 21, Township 23 South, Range 18 East, M. D. B. & M. and containing one hundred and sixty acres or less. Claim all petroleum, asphaltum *ad* kindred substances contained therein; also water for domestic and mining purposes and uses. This claim *shal* be known as the George W. Mining Claim. Is situate in Kings County State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

GEO. W. WARNER,
CLAUD BARNES,
W. H. FRASER,
DAVE ISHLMAN,
ASH SERVICE,

FRANK PREVOST,
SAME MARSHBACK and
H. R. CROZIER,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 6 min. past 8 o'clock A. M., in Vol. 3 Miscel., Kings County Records. Jas. M. Bowman, Recorder."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN. that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the northeast corner of Section 31, Township 23 South, Range 18 East, M. D. B. & M., and running South 40 chains, thence west 40 chains thence north 40 chains, thence east 40 chains to the point of beginning, this being the northeast quarter of Section 31 Township 23 South, Range 18 East, M. D. B. & M., and containing one hundred and sixty acres or less. Claim all petroleum, asphaltum and kindred substances contained therein, also water for domestic and mining purposes [215] and uses.

This claim shall be known as the Thirty-One Oil Mining Claim. Is situate in Kings County, State of California.

Located and a copy of this notice posted on the

ground this the 19th day of June, 1909.

JNO. W. BOURDETTE,
WALTER BACON,
H. E. AYERS,
CHAS. JAMES,
CHALK ROBERTS,
ROBERT RENDALL,
HENRY C. KERR,
GEORGE EAGLE,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the request of A. M. Anderson, June 21st, A. D. 1909, at 7 min. past 8 o'clock A. M., in Vol. 3 of Miscel., page 453, Kings County Records.
Jas. M. Bowman."

"LOCATION NOTICE.

NOTICE IS HEREBY GIVEN, that the undersigned have this day located and claim, under the Mining Laws of the United States, the following described Placer Claim, bounded and described as follows:

COMMENCING at the southwest corner of Section 15, Township 23 South, Range 17 East, M. D. B. & M., and running north 40 chains, thence east 40 chains, thence south 40 chains *then* west 40 chains to the point of beginning, this being the northwest quarter of Section 15, Township 23 South, Range 17 East, M. D. B. & M., and containing one hundred and sixty acres or less. Claim all petroleum, asphaltum and kindred substances contained therein, also

water for domestic purposes and uses. This claim shall be known as the Rendall Oil Mining Claim. Is situate *ain* Kings County, State of California.

Located and a copy of this notice posted on the ground this the 19th day of June, 1909.

ROBERT RENDALL,
HENRY C. KERR,
GEORGE EAGLE,
JAMES WARD,
A. M. ANDERSON,
J. L. D. WALP,
T. J. TURNER, and
E. M. SCOTT,

Locators.

Witness to posting,

S. J. GALLAGHER.

Recorded at the *rguest* of A. M. Anderson, June 21st, A. D. 1909, at 13 min. past 8 o'clock A. M., in Vol. 3 of Miscel., [216] page 456, Kings County Records. Jas. M. Bowman, Recorder."

And your orators further say, that said notices of location were duly filed, in the manner prescribed by law, for record, and were duly recorded in the office of the County Recorder of Fresno and Kings Counties, State of California, at the time and on the dates in the endorsements thereon and therein respectively set forth and stated; and that none of said locations nor the records of the same, nor any, or either of them, have ever been relinquished, waived, or cancelled, but now are, and have been, at all times, in full force and effect.

X.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith, Guy H. Salisbury and N. M. Salisbury, and E. M. Cooke, P. W. Cypher and Frank Prevost, the original locators of the hereinafter described placer mining claims, bargained, sold, quitclaimed, transferred and conveyed to Fred E. Windsor, all the rights, title, claim, interest and estate in and to said certain placer mining claims set forth in this bill, known and described as follows, to wit:

The Zeb Mining Oil Claim: Commencing at the southeast corner of Section 7, township 21 south, range 15 east, M. D. B. & M. and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to the point of beginning, and being the southeast quarter of section 7, township 21 south, range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less, and filed for record in Vol. 15 of Mining Claims, page 108 Fresno County Records, No. 8995.

Also the ELEVENTH MINING CLAIM: Commencing at the northeast corner of section 11, township 20 south, range 15 east, M. D. B. & M., and running south 40 chains, thence west 40 chains, [217] thence north 40 chains, thence east 40 chains to the point of beginning. This being the northeast quarter of section 11, township 20 south, range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the SWARTZLANDER OIL MINING

CLAIM: Commencing at the northwest corner of section 29, township 20 south, range 15 east, M. D. B. & M., and running east 40 chains, thence south 40 chains, thence west 40 chains, thence north 40 chains to the point of beginning. This being the northwest quarter of Section 29, range 15 east, M. D. B. & M., and containing one hundred *dna* sixty acres or less.

Also the **TOMMY OIL MINING CLAIM:** Commencing at the quarter west line of Section 31, township 20 south, range 15 east, M. D. B. & M., and running south 20 chains, thence east 80 chains; thence north 20 chains, thence west 80 chains to the point of beginning. This being *gh* the north half of the south half of Section 31, township 20 south, range 15 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the **GREENLEAF MINING CLAIM:** Commencing at the northwest corner of section 11, township 20 south, range 15 East, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains to the point of beginning. This being the northwest quarter of Section 11, township 20 south, Range 15 East, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the **GEORGE W. MINING CLAIM:** Commencing at the southeast corner of Section 5, township 20 south, range 15 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to the point of beginning, this being the southeast quarter of section 5, township 20 south, range 15 east, M. D. B. & M.,

and containing one hundred and sixty acres or less.

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Also the *NEW EST MINING CLAIM*: Commencing at the southwest corner of Section 5, township 20 south, range 15 east, M. D. B. & M., and running north 40 chains, thence east 40 chains, thence south 40 chains, thence west 40 chains, to the point of beginning, being the southwest quarter of Section 5, township 20 south, range 15 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also the *EAGLE OIL PLACER MINING CLAIM*: Commencing at the southwest corner of Section 1, township 20 south, range 15 east, M. D. B. & M., running north 40 chains, thence at right angles east 40 chains, thence at right angles south 40 chains, thence at right angles west 40 chains to place of beginning, containing one hundred and sixty acres or less.

Also the *TOM OIL PLACER MNING CLAIM*: Commencing at the southeast corner, Section 19, Township 20 south, range 15 east, M. D. B. & M., thence north 40 chains, thence at right angles west 40 chains, thence at right angles south 40 chains, thence at right angles east 40 chains to the place of beginning, containing one hundred and sixty acres.

Also the *COREY OIL PLACER MINING CLAIM*: Commencing at the northeast corner of Section 29, township 20 south, range 15 east, M. D. B. & M., being the northeast quarter, thence west 40 chains, thence at right angles south 40 chains, thence at right angles east 40 chains, thence at right angles north 40 chains, to place of beginning, containing one hundred

and sixty acres.

Also the EWING OIL PLACER MINING CLAIM: Commencing at the southeast corner of Section 17, township 20 south, range 15 east, M. D. B. & M., thence *nrthn* 40 chains, thence at right angles west 40 chains, thence at right angles southe 40 chains, thence at right angles east 40 chains to the place of beginning, containing one hundred and sixty acres.

Also the DAVE OIL MINING CLAIM: Commencing at the southeast [219] — of Section 15, township 23 south, range 17 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains, to place of beginning, being the southeast quarter of Section 15, township 23 south, range 15 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the KERR OIL MINING CLAIM: Commencing at the northeast corner of Section 25, township 23 south, range 17 east, M. D. B. & M., and running south 40 chains, thence west 40 chains, thence north 40 chains, thence east 40 chains to the point of beginning, being the northeast quarter of Section 25, township 23 south, range 17 east, M. D. B. & M., and containing one hundred and sixty acres or less.

Also PREVOST OIL MINING CLAIM: Commencing at the southeast corner of Section 25, township 23 south, range 17 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to the point of beginning, being the southeast quarter of Section 23, township 23 south, range 17 east, M. D. B. & M., con-

atining one hundred and sixty acres or less.

Also the UNCLE SAM OIL MINING CLAIM: Commencing at the northwest corner of Section 25, township 23 south, range 17 east, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains, to the point of beginning, being the northwest quarter of Section 25, township 23 south, range 17 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also the COOKE OIL MINING CLAIM: Commencing at the northeast corner of Section 23, township 23 south, range 17 east, M. D. B. & M., and running south 40 chains, thence east 40 chains, thence north 40 chains, thence west 40 chains, to point of beginning, being the northeast quarter of Section 23, township 23 [220] south, range 17 east, M. D. B. & M., contining one hundred and sixty acres or less.

Aso the WARD OIL MINING CLAIM: Commencing at the southeast corner of Section 31, township 23 south, range 13 east, M. D. B. & M., and running north 40 chains, thence west 40 chains, thence south 40 chains, thence east 40 chains to point of beginning, being the southeast quarter of Section 31, township 23 south, range 15 east, M. D. B. & M., and conaining one hundred and sixty acres or less.

Also the J. M. R. OIL MINING CLAIM: Commencing at the southwest corner of Section 31, township 23 south, range 18 east, M. D. B. & M., and running north 40 chains, theence east 40 chains, thence south 40 chains, thence west 40 chains to point of beginning, being the southwest quarter of Section 31,

township 23 south, range 18 east, M. D. B. & M., containing one hundred and sixty acres or less.

Also all the right, title, interest and estate of P. W. Cypher in and to the Five Oil Mining Claim, The Eleven Mining Claim, the Tom Oil Placer Mining Claim, the Corey Oil Placer Mining Claim, the M. J. C. Oil Mining Claim, the Ward Oil Mining Claim, and the Buster Oil Placer Mining Claim, as is in this bill hereinbefore described.

Also all the right, title, interest and estate of Frank Prevost in and to the Bourdette Oil Placer Mining Claim, the Fraser Clan Mining Claim, the Ishlman Oil Placer Mining Claim, the Fifteen Oil Mining Claim, the Prevost Oil Mining Claim, the M. J. C. Oil Mining Claim, the Geo. W. Oil Mining Claim, as is in this bill hereinbefore described.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith, Ed. N. Ayers, John W. Bourdette, Walter Bacon, Dave Ishlman, Chas. James, the original locators [221] of the hereinafter described Placer Mining Claims, bargained, sold, quitclaimed, transferred and conveyed to James P. Sweeney, all the right, title, claim, interest and estte in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

THE GEORGE W. MINING CLAIM, Bourdette Oil Placer Mining Claim, Greenleaf Mining Claim, Eagle Oil Placer Mining Claim, Corey Oil Placer Mining Claim, Swartzlander Oil Mining Claim, Bacon Oil Mining Claim, Dave Oil Mining Claim, J.

W. Oil Mining Claim, Barada Oil Mining Claim, Big Five Mining Claim, Greater Mining Claim, Ayers Oil Placer Mining Claim, Johnson Oil Mining Claim, Roberts Oil Mining Claim, Loftus Oil Mining Claim, Thirty-one Oil Mining Claim, New West Mining Claim, Seven Oil Mining Claim, Fraser Clan Mining Claim, Ishlaman Oil Placer Mining Claim, Fifteen Oil Mining Claim, Cooke Oil Mining Claim, M. J. C. Oil Mining Claim, Southern Five Mining Claim, Old Oil Placer Mining Claim, James Oil Mining Claim, as is in this bill hereinbefore described.

Your orators further state and show unto your Honors, that oprior to the commencement of this suit, for a valuable consideration, and in good faith, W. W. Ayers, the original locator of the hereinafter described placer mining claims, bargained, sold, quit-claimed, transferred and conveyed to Thomas Barrett, Sr., all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

The Big Five Mining Claim, Bourdette Placer Mining Claim, Greater Mining Claim, Ayers Placer Mining Claim, Swartzlander Mining Claim, Johnson Oil Mining Claim, Roberts Oil Mining Claim, *Roberts Oil Mining Claim*, Loftus Oil Mining Claim, Barada Oil Mining Claim, Seven Oil Mining Claim.

Your orators further state and show unto your Honors, that [222] prior to the commencement of this suit, for a valuable consideration, and in good faith, H. R. Crozier, the original locator of the hereinafter described placer mining claims, bargained, sold, quitclaimed, transferred and conveyed to W.

W. Wickline, all his right, title, interest, claim and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit: The Five Oil Mining Claim, The Fraser Clan Mining Claim, Ishlman Oil Placer Mining Claim, Prevost Oil Mining Claim, Uncle Sam Oil Mining Claim, Geo. W. Oil Mining Claim, Buster Oil Placer Mining Claim.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration and in good faith, George Eagle, the original locator of the hereinafter described placer mining claims, bargained, sold, quit-claimed, transferred and conveyed to William M. Johnson, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Southern Five Mining Claim, Eagle Oil Placer Mining Claim, Old Oil Placer Mining Claim, James Oil Mining Claim, Rendall Oil Mining Claim, Kerr Oil Mining Claim, Thirty-one Oil Mining Claim.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration and in good faith, Henry C. Kerr, the original locator of the hereinafter described Placer Mining Claims, bargained, sold, quit-claimed, transferred and conveyed to Milo B. Rowell, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Southern Five Mining Claim, Ayers Oil Placer Mining Claim, Old Oil Placer Mining Claim, James

Oil Mining Claim, Bacon Oil Mining Claim, Kerr Oil Mining Claim, Rendall Oil Mining Claim, [223] Thirty-one Oil Mining Claim, New West Mining Claim.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration and in good faith, D. M. Speed, the original locator of the hereinafter described placer mining claims, bargained, sold, quit-claimed, transferred and conveyed to W. Herbert Gates, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

George W. Mining Claim, Greater Mining Claim, Eleven Mining Claim, J. W. Oil Mining Claim, Barada Oil Mining Claim, J. M. R. Oil Mining Claim, New View Mining Claim, Zeb Oil Mining Claim.

Your orators further state and show unto your Honors, that prior to the commencement of this suit, for a valuable consideration, and in good faith, T. J. Turner, the original locator of the hereinafter described placer mining claims, bargained, sold, quit-claimed, transferred and conveyed to H. T. Faust, all the right, title, claim, interest and estate in and to certain placer mining claims set forth in this bill, known and described as follows, to wit:

Five Oil Mining Claim, Eleven Mining Claim, Eagle Oil Placer Mining Claim, Tom Oil Placer Mining Claim, Tommy Oil Mining Claim, Rendall Oil Mining Claim.

And your orators further say unto your Honors, that Fred E. Windsor, Thomas Barrett, Sr., James

P. Sweeney, W. W. Wickline, William M. Johnson, Milo L. Powell, W. Herbert Gates, H. T. Faust, are now the true and lawful owners and holders of all the title and estate of said grantors, original locators of said premises and placer mines conveyed as aforesaid.

XI.

And your orators further say unto your Honors, that they [224] are now in actual possession of said lands hereinbefore described, under the mining laws of the United States of America, and your orators further insist and submit that they are entitled to the exclusive use and possession of all of said lands, to do all assessment work thereon, subject, however, to the paramount title of the United States of America therein and thereto up to and until such time as your orators can obtain a patent thereto which they are endeavoring to secure, and that there is ample unsold, unreserved and undisposed of land along said lines of the aforesaid Railroad Company, within the State of California, to which pre-emption of homestead claim has not attached, from which to select an amount equal to the mineral lands in the aforesaid tract incorporated, and particularly the lands herein claimed by your orators.

XII.

Your orators show and aver that defendants, The Southern Pacific Railroad Company and its confederates, and its fraudulent conduit, the Kern Trading and Oil Company, defendant herein, threatens to and will, unless restrained and enjoined, trespass upon the lands involved in this suit, and that said defand-

ants will interfere with the possession of said lands by your orators by force, and violence, and with hired, vicious and desperate men, will prevent your orators from performing the necessary and lawful assessment work upon said lands, or from making further and proper discoverues of minerals of oil thereon.

The defendant, the Kern Trading and Oil Company, did willfully and knowingly, through one of its duly authorized agents, and officers, maliciously publish or did cause to be maliciously published in the "California Oil World," a newspaper of general circulation, published at Bakersfield, Kern County, California, in July 1, 1909, issue thereof the following unlawful, wicked and [225] vicious threat:

"RAILROAD TO PROTECT LANDS.

"Will not Say Whether With Rigs or Guns.

"Bakersfield, June 30.—A high official of the K. T. & O. who declined to *ermit* his name to be used, asserted emphatically to-day that the Southern Pacific would protect all the lands that it owns that have been jumped.

"'You may be fully assured,' said he, 'that if any overt act is undertaken by the jumpers who have filed location notices on all the land of the Company from Sunset through Coalinga, we will protect our property.'

"'How will you protect it?' he was asked. 'With guns or drilling rigs?'

"'We will protect it effectively,' was the reply."

And your orators further show and aver, that

defendant, The Kern Trading and Oil Company, is meant by the letters and sign K. T. & O. Co. in said article, in said newspaper, and defendant, The Kern Trading and Oil Company, did in fact intend it to be understood by those who read such article, and said articles was and is understood by those who read it to mean, and it did and does mean, that defendant, The Kern Trading and Oil Company and its confederates, the Southern Pacific Railroad Company, would and will use deadly weapons to drive your orators off from, and away from the lands located by your orators, and claimed in this suit, thereby preventing your orators from doing their assessment work, as by law required, and obtaining patents. And defendants the Southern Pacific Railroad Company, and its confederates, the Kern Trading and Oil Company, have made divers and sundry other vicious and unlawful threats, to divers persons, to the effect, that they, the said defendants, would take the law in their own hands to protect their so-called pretended, and usurped claims in the lands involved in this suit, by firearms, and [226] deadly weapons, committing murder, if necessary; and your orators aver that unless restrained and enjoined by the process of your Honorable Court said acts will be committed by said defendants and the damages and injuries so threatened will be irreparable, unless it please your Honors, the premises considered, to grant unto your orators an interlocutory injunction pending the determination of this suit.

XIII.

Your orators further aver and show unto your

Honors, that each piece, parcel or tract of land involved in this suit, is over the value of \$2,000.00 exclusive of interest and costs. And your orators in consideration thereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, and to save a multiplicity of suits and actions at law, and to the end, therefore, that the said defendants may, if they can (answer under oath being specially waived) and according to the best, and utmost of their several belief, fully true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by note hereunder written they are respectfully required to answer; that is to say:

1st. Has the Southern Pacific Company a lease upon the roadbed and rolling stock of the Southern Pacific Railroad Company; if so, when does it expire, and what are the terms, covenants and conditions, and does it include in any way, the land grant now held by defendant, the Southern Pacific Railroad Company, under the Act of Congress approved July 27, 1866, and all Acts and Joint Resolutions, amendatory thereof, and supplementary thereto?

2nd. Have you, or either of you, a copy of the agreement consolidating [227] the Southern +acific Railroad Company of California, with the Southern Pacific Railroad Company of Arizoa and New Mexico?

3d. Will you please produce it or a true copy of the original?

4th. If you will not produce it, what is there contained in said agreement that you desire to conceal?

5th. What motive have you in concealing said agreement and why do you refuse to produce it?

6th. Please give the full and true names of all the stockholders in the defendant, the Kern Trading and Oil Company, and state whether or not its stock is held in escrow and by whom and whose safe is in in and why it was put there, and in whose name?

7th. Please give the present occupation of the Directors of the Kern Trading and Oil Company.

8th. How long have they, each, worked for the Southern Pacific Railroad Company?

9th. What salary do they, each, receive from the Southern Pacific Railroad Company?

10th. What salary do they, each, receive from the Kern Trading and Oil Company, as officers, or directors of that corporation?

11th. Please state who are now the trustees of the first mortgage on the land grant of 1866 and 1870 of defendant, the Southern Pacific Railroad Company of California.

12th. Please state who are now the trustees if the second and third mortgage upon the land grant of the Southern Pacific Railroad Company of California.

13th. Please state how many leases the Southern Pacific Company has made to the Kern Trading and Oil Company. [228]

14th. Will you please furnish a copy of said

leases and place the same on file with the papers in this case?

15th. If not, why?

16th. What do you wish to conceal?

17th. Why did *you record* these leases with the respective Recorders of Fresno and Kings Counties, California, in the manner provided by law in the State of California, and according to the custom of business men in all, *communites*, and what *d* you wish to conceal?

18th. Where is the head office and principal place of business of defendant, the Kern Trading and Oil Campanyl is it in the Flood Building, San Francisco, California?

19th. Is it not a fact that the Kern Trading and Oil Company was organized for the purpose of holding and manipulating all the mineral lands of the Southern Pacific Railroad Company of California?

20th. Why and for what pirpose was it organized? Please state fully without evasion, reservation or equivocations or deceit.

21st. Have you any objection to giving the solicitor or counsel for complainants permission to examine the books of the Kern Trading and Oil Company?

22nd. If you have, why?

23rd. What *di* you wish to conceal?

24th. How much money does the Kern Trading and Oil Company turn over monthly or at any other tine to defendant, the Southern Pacific Railroad Company?

25th. How much semi-annually?

26th. How much annually?

27th. When do settlements take place between the Kern Trading and Oil Company, and the Southern Pacific Railroad Company?

28th. Will you furnish a copy of this last statement or settlement between the Kern Trading and Oil Company and the Southern [229] +acific Railroad Company, including copy of statement of all transactions up to that time?

29th. Will you furnish a true copy of all trust deeds given by defendant, the Southern Pacific Railroad Company, and which you claim to be a lien upon the land grant set forth and described in this suit?

30th. Will you give a full, fair and truthful statement of the amount of all bonds outstanding, secured by said trust deeds?

31st. Who are the present officers and directors of the Southern Pacific Railroad Company of New Mexico?

32nd. Who are the present officers and directors of the Southern Pacific Railroad Company of Atizoa?

33rd. Do you know who were the directors and officers of the Southern Pacific Railroad Company during the years 1892, 1893 and 1894, and will you answer and do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? Will you set forth the same fully and at large in your answer?

The defendant, the Southern Pacific Company,

and the Southern Pacific Railroad Company, consolidated, by their officers, are required to answer interrogatorv No. 1, 2, 3, 4, 5, 27, 28, 29, 30, 31, 32, 33.

The defendant, the Kern Trading and Oil Company by its officers, Edwin T. Dumble, George L. King, C. H. Redington, J. E. Foulds, W. A. Worthington, and W. R. Scott, are required to answer interrogatories numbers 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28. The defendants, the Southern Pacific Railroad Company, consolidated as is in this bill more specifically set forth, and the Kern Trading and Oil [230] Company. The defendants W. F. Herrin and E. E. Calvin are required to answer interrogatores numbers 1, 2, 3, 4, 5, 11, 12 and 23, and that all the defendants be required to answer the premises.

1st. WHEREFORE: YOUR ORATORS PRAY:

That an instruction and interpretation be had and made by this Court of sections 3 and 18 of said Act of Congress, approved July 27, 1866, and the mandatory joint resolution of Congress authorizing, instructing and requiring the Secretary of the Interior of the United States to issue patent to thr Southern Pacific Railroad Company of California, and "expressly" prescribing what said patents should, and should not contain, approved June 28th, 1870, and the final order or decree, that patent issue, made by the commissioner of the General Land Office and approved by the Honorable Secretary of the Interior of the United States of America on June 27th, 1894, also the clause in said decree and patent reading as follows:

"Yet excluding and excepting and mineral lands" should any such be found in the tracts aforesaid, but this exclusion and exception, according to the terms of the statute shall not be construed to include "coal and iron lands" and all of said patent.

2nd. That the title of the complainants *and in* to the lands and premises hereinbefore described, be, by decree or judgment of this court, confirmed, and that the defendants and all persons or corporations claiming under them, be forever foreclosed and barred from having or claiming any title or interest therein or thereto.

3rd. That an interlocutory injunction be issued by this Court against each, any and all of the defendants herein, their servants, agents, attorneys, employees, and all persons in privity with them, and all persons acting under the control, authority or direction [231] of defendants, or either of them, directly or indirectly, requiring each, all and every one of them, to desist from any interference with the property in dispute, claimed herein, until *the* final *de-determination* of this suit, and that at that time, said injunction be permanent.

4th. That defendants, the Southern *Oacific* Railroad Company, a corporation, the Equitable Trust Company of New York, Homer S. King, Central Trust Company of New York, a corporation, the Kern Trading and Oil Company, a corporation, may be required to set forth the nature of their respective claims in or to the property involved in this suit, that all adverse claims of defendants may be determined by a decree of this *suit* and the operating of

the patent herein set forth, be restricted and controlled.

5th. That by said decree it be declared and adjudged that defendants, the Southern Pacific Railroad Company of California, a corporation, Homer S. King, Central Trust Company of New York, a corporation, Equitable Trust Company of New York, The Kern Trading and Oil Company, a corporation, has no estate or interest whatever in or to said lands and premises involved in this suit under said patent or any part or parcel thereof, and that the title of plaintiffs is good and valid, to the property in controversy, subject, however, to the paramount title of the United States of America thereto.

6th. That defendants be forever enjoined and barred from asserting any claim whatever in or to said lands and premises, or the minerals therein, adverse to the interests of your orators *et al.* herein, and for such other and further relief preliminary and final, as to this Court seem most equitable and just, and judgment and decree against defendants herein, the Southern Pacific Railroad Company, a corporation, for their costs and disbursements in this suit.

7th. May it please your Honors to grant unto your orators the writ of subpoena of the United States of America, directed [232] to the Southern Pacific Company, a corporation, the Southern Pacific Railroad Company, a corporation, and the Southern Pacific Railroad Company of Arizona, a corporation, and the Southern Pacific Railroad Company, of New Mexico, a corporation, consolidated; Homer S. King, as Trustee. The Central Trust Company of

New York, State of New York, a corporation; the Equitable Trust Company of New York, a corporation; the Kern Trading and Oil Company, a corporation; Julius Kruttschnitt, J. H. Wallace, J. L. Willcutt, W. A. Worthington, E. E. Calvin, Edwin T. Dumble, George L. King, C. H. Redington, W. R. Scott, J. E. Foulds, J. A. Jones, William Herron, I. W. Hellman, James Wilson, F. K. Ainsworth, William Hood, A. K. Van Deventer, Joseph Hellen, William Mahl, commanding them on a certain day and under a cervain penalty, to be and appear in this court, then and there to answer the premises, and to stand to, and abide by, such order and decree as may be made against them, and your complainants will ever pray.

FRANCIS J. HENEY,
B. D. TOWNSEND, and
A. H. BLATCHLEY,
Solicitors for Complainants.

State of California,
County of San Francisco,
Northern District of California,
United States of America,—ss.

I, James P. Sweeney, being first duly sworn, on *my own* behalf of all the other complainants in the within suit, depose and say: That I am one of the complainants herein; that I have read the foregoing Bill of Complaint and know the contents thereof, and that the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, [233] ans as to those mat-

The Southern Pacific Company et al. 287
ters I believe it to be true.

JAMES P. SWEENEY.

Subscribed and sworn to before me this 29th day
of April, 1911.

[Seal] J. J. KERRIGAN,
Notary Public in and for the City and County of San
Francisco, State of California.

Northern District of California,
United States of America, Ninth Circuit,—ss.

I, A. H. Blatchley, one of the solicitors for com-
plainants, hereby certify that I have compared the
above copy with the original bill and the same is a
true copy of said origina; bill and the whole thereof.

A. H. BLATCHLEY.

[Endorsed]: No. 177—In Equity. United States
Circuit Court, Ninth Judicial Circuit, Southern Dis-
trict of California, Northern Division. George D.
Roberts et al., Complainants, vs. The Southern
Pacific Company, a Corporation, et al., Defendants.
Amended and Supplemental Bill of Complaint.
Service of copy of the within admitted. Apr. 29th,
1911. Wm. Singer, Jr., D. V. Cowden and G. V.
Shoup, Attys. for Defts. Filed April 29th, 1911.
Wm. M. Van Dyke, Clerk. Francis J. Heney, B. D.
Townsend and A. H. Blatchley, Solicitors for Com-
plainats. [234]

In the Circuit Court of the United States of America, in and for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT T. GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),
Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF

NEW MEXICO (a Corporation), Consolidated, and [235] HOMER S. KING, as Trustee), THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

Petition for Allowance of Appeal.

The above-named complainants, conceiving themselves aggrieved by the decree made and entered by the said Circuit Court, in the above-entitled cause, on March 21, 1911, sustaining the demurrers of the Southern Pacific Railroad Company and the Kern Trading and Oil Company to and dismissing the Amended and Supplemental Bill of Complaint, do hereby appeal from said decision to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors filed herewith, and pray that this appeal may be allowed, and that a transcript of the record, papers

and proceedings upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

FRANCIS J. HENEY,
Solicitor for Complainants. [236]

[Endorsed]: No. 177—In Equity. In the Circuit Court of the United States in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs. The Southern Pacific Railroad Company et al., Defendants. Petition for Allowance of Appeal. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Francis J. Heney, Solicitor for the Complainants. [237]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division, Ninth Circuit.*

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT T. GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICK-

LINE, J. M. ROBERTSON, P. C. TAYLOR,
HENRY GREENLEAF, R. M. COOK, I. W.
ALEXANDER, J. W. SWARTZLANDER,
HENRY BARADA and E. M. SCOTT (a
Voluntary Unincorporated Association),
Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA (a Corporation), and the SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated, and HOMER S. KING, as Trustee), [238] THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

Assignment of Errors.

Now come the complainants in the above-entitled cause, by Francis J. Heney, their solicitor, and *ssign* the following errors upon which they will rely on their appeal from the decree heretofore made and entered by this Honorable Court on the 21st day of March, 1911, in the above-entitled cause, to wit:

I.

The Court erred in sustaining defendants' respective demurrs to complainants' amended and supplemental Bill of Complaint and in making and entering a decree dismissing complainants' said amended and supplemental Bill of Complaint.

II.

That the Court erred in holding that said amended and supplemental Bill of Complaint did not state facts sufficient to constitute a cause of suit against the defendants demurring, or matter entitling complainants to the relief sought. [239]

III.

That the Court erred in holding that any cause of action or cause of suit shown or sought to be shown by said amended and supplemental Bill of Complaint is barred by the Act of Congress approved March 2d, 1896, *wntitled* "AN ACT TO PROVIDE FOR THE *EXCEPTION* OF TIME WITHIN WHICH SUITS MAY BE BROUGHT TO VACATE AND ANNUL LAND PATENTS AND FOR OTHER PURPOSES," and printed and published in Volume 29, page 42 et seq., United States at Large, or by Sections 318, 319, 320, 321, and

343 of the Codes of Civil Procedure of the State of California.

IV.

That the Court erred in holding that any cause of action or of suit shown by said amended and supplemental Bill of Complaint, is barred by the long delay and latches of complainants.

V.

That the Court erred in holding that the exception of mineral lands contained in said patent was inserted therein by officers of the Government without authority of law, and that the same was invalid, and without binding force.

VI.

That the Court erred in holding that the said patent issued without any examination as to the quality of the land embraced within it or any determination or adjudication by the United States Land Department that the land was not mineral, was conclusive of the nonmineral quality of the lands described in the aforesaid amended and supplemental Bill of Complaint, and that it was not competent for complainants in this Court to show the mineral character or quality of said lands, and thus avoid said patent.

VII.

That the Court erred in holding that the acceptance by the Southern Pacific Railroad Company of the patent at the time [240] and in the manner set forth in the amended Bill of Complaint did not constitute an estoppel which precluded on its part

the denial of the validity of the mineral exception therein contained.

VIII.

That the Court erred in holding that the Joint Congressional Resolution of June 30, 1870, did not authorize and direct the inclusion in said patent of the exception of mineral lands therein contained.

IX.

That the Court erred in holding that the granting act of July 27, 1866, did not authorize and provide for, under the particular circumstances set forth in the amended Bill of Complaint, the inclusion in said patent of said exception of mineral land.

X.

That the Court erred in holding that there had been before issuance of said patent a determination by the land department of the United States that the land was agricultural and not mineral.

XI.

That the Court erred in holding that the said patent was, on its face, regular and sufficient to convey the legal title of said lands to the said Southern Pacific Railroad Company in absence of any statement of the character or quality of said land or of any adjudication or determination of the character or quality of the land and in face of the statement in the patent that there had not been any determination as to the mineral or nonmineral character or quality of the land embraced in the patent.

FRANCIS J. HENEY,
Solicitor for Complainants.

[Endorsed]: No. 177—In Equity. In the Circuit Court of the United [241] States of America in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs. The Southern Pacific Company a Corporation, et al., Defendants. Assignment of Errors. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Francis J. Heney, Solicitor for Complainants. [242]

In the Circuit Court of the United States of America, in and for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), et al.,

Defendants.

Order Allowing Appeal.

On motion of Francis J. Heney, solicitor in this cause, for the above-named complainants, it appearing to the Court that said complainants have filed their Assignment of Errors, IT IS HEREBY ORDERED, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree in said cause made and entered on the 21st day of March, 1911, be and the same is hereby allowed; and it is further ordered that the bond for

costs, be, and the same is, hereby fixed at the sum of Five Hundred Dollars (\$500).

Dated September 15, 1911.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: No. 177—In Equity. In the Circuit Court of the United States in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs. Southern Pacific Company et al., Complainants. Order Allowing Appeal. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Francis J. Heney, Solicitor for Complainants. [243]

(VIGNETTE)

AMERICAN SURETY COMPANY
OF NEW YORK.

Capital and Surplus \$5,500,000.

Company's Office Building,
100 Broadway, New York.

In the Circuit Court of the United States of America, in and for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT T. GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D.

LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC [244] RAILROAD COMPANY OF CALIFORNIA (a Corporation), and the SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation). and THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated, and HOMER S. KING, as Trustee, THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY

(a Corporation), JULIUS KRUTT-SCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, George D. Roberts, Z. L. Phelps, James Maynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David Ewing, W. Herbert T. Gates, W. M. Johnson, S. J. Gallagher, O. D. Loftus, Thomas Barrett, Sr., H. E. Ayers, James P. Sweeny, Chalk Roberts, Robert Rendall, Milo L. Rowell, H. T. Faust, James Ward, J. L. D. Walp, Fred E. Windsor, M. J. Corey, J. W. Warner, Claud Barnes, W. H. Fraser, Ash Service, [245] Samuel Marshback, W. W. Wickline, J. M. Robertson, P. C. Taylor, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzlander, Henry Barada and E. M. Scott, a voluntary unincorporated association, as principals, and the American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, and duly authorized to transact business in the State of California, as surety, are held and firmly bound

unto The Southern Pacific Company, a corporation, (The Southern Pacific Railroad Company of California, a corporation, and The Southern Pacific Railroad Company of Arizona, a corporation, and The Southern Pacific Railroad Company of New Mexico, a corporation, consolidated), and Homer S. King, as trustee, The Central Trust Company of New York, State of New York, a corporation, The Equitable Trust Company of New York, State of New York, a corporation, The Kern Trading and Oil Company, a corporation, Julius Kruttschnitt, J. H. Wallace, J. L. Willcutt, W. A. Worthington, E. E. Calvin, Edward T. Dumble, George L. King, C. H. Redington, W. R. Scott, J. E. Foulds, J. A. Jones, William F. Herrin, I. W. Hellman, James Wilson, E. K. Ainsworth, William Hood, A. K. Van Deventer, Joseph Hellen and William Mahl, corporations organized and existing under the laws of the State of California, in the full and just sum of Five Hundred Dollars (\$500.00), lawful money of the United States of America, to be paid to the said defendants, their attorneys, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 15th day of September, A. D. 1911.

WHERE, lately at a session of the Circuit Court of the United States in and for the Southern District of California, [246] Northern Division, in a suit pending in said court between the said com-

plainants and the said defendants, a decree was rendered against the said complainants, and the said complainants having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals, to reverse the decree of the aforesaid suit, and a citation directed to said defendants, is to be issued citing and admonishing them to appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at San Francisco, California.

NOW, the condition of the said obligation is such that if the said complainants shall prosecute their appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and effect.

AMERICAN SURETY COMPANY OF
NEW YORK.

[Seal]

C. S. VAN BRUNDT,
Resident Vice-President.

Attest: HAROLD M. PARSONS,

Resident Assistant Secretary.

[Endorsed]: No. 177. In the Circuit Court of the United States of America, in and for the Southern Dist. of Calif., Northern Division, Ninth Circuit. Geo. D. Roberts et al. vs. Southern Pacific Co. et al. Appeal Bond. Approved September 15, 1911. Wm. W. Morrow, Circuit Judge. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. American Surety Com-

pany of New York, Brantley W. Dobbins, Acting Manager for Northern California and Nevada, Clunie Building, San Francisco, California. [247]

In the Circuit Court of the United States of America, in and for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. 177.

GEORGE D. ROBERTS et al.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Defendants.

Praecipe for Transcript on Appeal.

To the Clerk of said Court:

Sir: Please issue and send to the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, transcript on appeal in above suit, made up of the following records: (1) Citation on Appeal; (2) Amended and Supplemental Bill; (3) Subpoena to Southern Pacific Company and Kern Trading and Oil Company, with proof of service; (4) Demurrers to Amended and Supplemental Bill; (5) Order Sustaining Demurrer; (6) Decree; (7) Reasons of Court on Demurrer; (8) Verified Petition of James P. Sweeney for order allowing complainants to plead over, serve and file, "Amended Bill for, as, and instead of," Amended Bill dismissed by decree made and entered March 21, 1911, and affidavits of Francis J. Heney and A. H. Blatchley

thereto; (9) Order to Show Cause Why Said Petition Should not be Granted; (10) Stipulation That Said Petition be Heard before Hon. William W. Morrow, at San Francisco, California; (11) Order Entering Francis J. Heney, B. D. Townsend and A. H. Blatchley on the Records as Solicitors for Complainants; (12) Order Allowing the Filing and Serving of Said Amended Bill; (13) Amended Bill [248] Filed Under Said Order, Made and Filed April 29th, 1911; (15) Petition for Order Allowing Appeal; (16) Assignment of Errors; (17) Order Allowing Appeal; (18) Bond on Appeal; (19) Clerk's Certificate to Transcript.

FRANCIS J. HENEY,
Solicitor for Complainants.

[Endorsed]: No. 177—In Equity. In the Circuit Court of the United States in and for the Southern District of California, Northern Division, Ninth Circuit. George D. Roberts et al., Complainants, vs. Southern Pacific Company et al., Defendants. Praeclipe for Transcript on Appeal. Filed Sep. 16, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Francis J. Heney, Solicitor for Complainants. [249]

[Clerk's Certificate to Transcript.]

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Northern Division.

No. 177.

GEORGE D. ROBERTS, Z. L. PHELPS, JAMES MAYNARD, Jr., A. M. ANDERSON, T. S. MINOT, NEWTON A. JOHNSON, DAVID EWING, W. HERBERT T. GATES, W. M. JOHNSON, S. J. GALLAGHER, O. D. LOFTUS, THOMAS BARRETT, Sr., H. E. AYERS, JAMES P. SWEENEY, CHALK ROBERTS, ROBERT RENDALL, MILO L. ROWELL, H. T. FAUST, JAMES WARD, J. L. D. WALP, FRED E. WINDSOR, M. J. COREY, J. W. WARNER, CLAUD BARNES, W. H. FRASER, ASH SERVICE, SAMUEL MARSHBACK, W. W. WICKLINE, J. M. ROBERTSON, P. C. TAYLOR, HENRY GREENLEAF, R. M. COOK, I. W. ALEXANDER, J. W. SWARTZLANDER, HENRY BARADA and E. M. SCOTT (a Voluntary Unincorporated Association),

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation), (THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA)

NIA (a Corporation), and THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA (a Corporation), and THE SOUTHERN PACIFIC [250] RAILROAD COMPANY OF NEW MEXICO (a Corporation), Consolidated, and HOMER S. KING, as Trustee), THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York (a Corporation), THE KERN TRADING AND OIL COMPANY (a Corporation), JULIUS KRUTTSCHNITT, J. H. WALLACE, J. L. WILLCUTT, W. A. WORTHINGTON, E. E. CALVIN, EDWARD T. DUMBLE, GEORGE L. KING, C. H. REDINGTON, W. R. SCOTT, J. E. FOULDS, J. A. JONES, WILLIAM F. HERRIN, I. W. HELLMAN, JAMES WILSON, E. K. AINSWORTH, WILLIAM HOOD, A. K. VAN DEVENTER, JOSEPH HELLEN and WILLIAM MAHL,

Defendants.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing two hundred and forty-nine (249) typewritten pages, numbered from 1 to 249, inclusive, and comprised in one volume, to be a full, true and correct copy of the pleadings, and of all papers and proceedings upon

which the final decree was made and entered in said cause, and also of the opinion of the Court, the petition for appeal, assignment of errors, order allowing appeal and bond on appeal in the above and therein entitled cause, and [251] that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in said cause.

I do further certify that the cost of the foregoing record is \$210.85, the amount whereof has been paid me by the complainants, George D. Roberts, et al., who are the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Northern Division, this 31st day of October, in the year of our Lord one thousand nine hundred and eleven, and of our Independence, the one hundred and thirty-sixth.

[Seal] WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California. [252]

[Endorsed]: No. 2070. United States Circuit Court of Appeals for the Ninth Circuit. George D. Roberts et al., Appellants, vs. The Southern Pacific Company (a Corporation), and The Kern Trading and Oil Company (a Corporation), Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California, Northern Division.

Received November 1, 1911.

F. D. MONCKTON,
Clerk.

Filed November 13, 1911.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Order Extending Time to Docket Cause and to File Record.]

United States Circuit Court of Appeals, for the Ninth Circuit.

GEORGE D. ROBERTS et al.,

Appellants,

vs.

THE SOUTHERN PACIFIC COMPANY (a Corporation) et al.,

Appellees.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to coket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same hereby is, enlarged and extended to and including the 14th day of November, 1911.

Los Angeles, California, October 9, 1911.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: No. 2070. United States Circuit Court of Appeals for the Ninth Circuit. George D. Roberts et al., Appellants, vs. The Southern Pacific Company et al., Appellees. Order Extending Time to Docket Appeal. Filed Oct. 9, 1911. F. D. Monckton, Clerk. Refiled Nov. 13, 1911. F. D. Monckton, Clerk.

